2021

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2021

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2021 REGULAR SESSION
OF THE LEGISLATURE

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 17

Title 77

(As Revised 2018)

For latest statutes or assistance call 1-800-833-9844

By the Editorial Staff of the Publisher

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

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PUBLISHER'S FOREWORD

Statutes

The 2021 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2021 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2021 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2021 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 77. Public Utilities and Carriers

CHAPTER 5. Electric Power

ARTICLE 19. MISSISSIPPI ELECTRIC COOPERATIVES BROADBAND COVID-19 ACT.

SEC.

77-5-901. Short Title.

77-5-903. Legislative findings and declarations; Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund created; Covid-19 Broadband Provider Grant Program Fund created; definitions; transfer of unobligated monies to Unemployment Compensation Fund.

77-5-905. Purpose of projects applied for by electric cooperatives or broadband providers; identification of unserved or underserved census blocks; electric cooperative's projects to be considered pilot or special purpose projects; applicants receiving grant monies to provide matching dollar for dollar nongrant monies toward projects.

77-5-907. Public Utilities Application Fund created; source of funds; unexpended monies; use of monies.

77-5-909. Application for grant programs; application fee; review of primary application; distribution of approved grants; criteria for determination of multiple projects including common census blocks; amended applications; ranking of primary applications for overdrawn grant funds; secondary and tertiary applications.

77-5-911. Monthly project status reports; requisite information; filing notice of project completion; field or onsite audits, engineering reviews, or requests for additional information to ensure compliance with article; financial information confidential and proprietary; written notice of compliance with article; noncompliant applicants.

CHAPTER 7. Motor Carriers.

ADMINISTRATION AND ENFORCEMENT

77-7-330. Commercial Transportation Enforcement Division of the Department of Public Safety to have jurisdiction over enforcement of the provisions of this chapter on Mississippi roads, streets and highways.

77-7-343. DPS Motor Carrier Enforcement Fund created; source and use of monies.

CHAPTER 17. Mississippi Broadband Enabling Act

77-17-1. Short title.

77-17-3. Definitions.

77-17-5. Electric cooperatives authorized to establish, acquire, own broadband affiliates, allow broadband affiliates or unaffiliated broadband operators to operate broadband system on their electric delivery system, and charge affiliates certain fees; restrictions on use of electric energy sales revenues; economic feasibility study required before electric cooperatives offer broadband services.

77-17-7.	No expansion of regulatory authority of state agencies, instrumentalities or political subdivisions beyond state or federal laws and regulations in place on January 30, 2019.
77-17-9.	Electric cooperatives prohibited from: allowing use of electric delivery system by affiliate to diminish reliability of the system, requiring purchase of broadband services from affiliate as condition of receiving electric energy from the cooperative, and disconnecting electric service for nonpayment of broadband services provided by affiliate.
77-17-11.	Use of cooperative's electric delivery system for provision of broadband services by affiliate not considered burden on real property on which electric delivery system is located; landowner's remedies for damages caused by use of electric delivery system by affiliate.
77-17-13.	Liberal construction of chapter.
77-17-15.	Annual audit of compliance with chapter; notice to members of election of board of directors, meetings, and election results.

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VOLUME SEVENTEEN

TITLE 77.

PUBLIC UTILITIES AND CARRIERS

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CHAPTER 1.

PUBLIC SERVICE COMMISSION

Sec.

77-1-15. Employment and duties of executive secretary; funding of agency expenses; deposit of monies into State General Fund [Repealed effective December 31, 2024].

§ 77-1-1. Creation of commission; terms, compensation and qualifications of commissioners [Repealed effective December 31, 2024].

A public service commission, hereinafter referred to in this chapter as the commission, is hereby created, consisting of three (3) members, one (1) to be elected from each of the three (3) Supreme Court districts by the qualified electors of such district. Elections for such officers shall be held in the general election in November 1959, and every four (4) years thereafter, and the terms of office of the three (3) commissioners elected at the general election in November 1959 shall expire on December 31, 1963.

The commissioners shall each receive a yearly salary fixed by the Legislature, payable monthly.

The commissioners shall each possess the qualifications prescribed for the Secretary of State. The commissioners shall not operate, own any stock in, or be in the employment of any telephone company, gas or electric utility company, or any other public utility that shall come under their jurisdiction or supervision.

HISTORY: Codes, 1942, § 7688; Laws, 1938, ch. 139; Laws, 1948, ch. 417, § 1; Laws, 1952, ch. 330, § 1; Laws, 1956, ch. 371, § 1; Laws, 1960, ch. 394, § 1; Laws, 1964, ch. 542, § 6; Laws, 1966, ch. 445, § 23; reenacted without change, Laws, 1982, ch. 389, § 1; Laws, 1989, ch. 573, § 1; reenacted, Laws, 1990, ch. 530, § 1; reenacted and amended, Laws, 1993, ch. 616, § 1; reenacted without change, Laws, 1996, ch. 526, § 1; reenacted without change, Laws, 1998, ch. 303, § 1; reenacted without change, Laws, 2002, ch. 452, § 1; reenacted without change, Laws, 2006, ch. 386, § 1; reenacted without change, Laws, 2008, ch. 406, § 1; reenacted without change, Laws, 2011, ch. 456, § 1; reenacted without change, Laws, 2012, ch. 542, § 1; reenacted without change, Laws, 2013, ch. 332, § 1; reenacted without change, Laws, 2016, ch. 437, § 1, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 1, eff from and after July 1, 2018; reenacted and amended, Laws, 2020, ch. 387, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment reenacted and amended the section by, in the last sentence of the last paragraph, deleting "common or contract carrier by motor vehicle" following "employment of any."

§ 77-1-3. Seal [Repealed effective December 31, 2024].

HISTORY: Codes, 1942, § 7695; Laws, 1938, ch. 139; reenacted without change, Laws, 1982, ch. 382, § 2; reenacted, Laws, 1990, ch. 530, § 2; reenacted without change, Laws, 1993, ch. 616, § 2; reenacted without change, Laws, 1996, ch. 526, § 2; reenacted without change, Laws, 1998, ch. 303, § 2; reenacted without change, Laws, 2002, ch. 452, § 2; reenacted without change, Laws, 2006, ch. 386, § 2; reenacted without change, Laws, 2008, ch. 406, § 2; reenacted without change, Laws, 2011, ch. 456, § 2; reenacted without change, Laws, 2012, ch. 542, § 2; reenacted without change, Laws, 2013, ch. 332, § 2; reenacted without change, Laws, 2016, ch. 437, § 2, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 2, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 2, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 2. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-5. Office, meetings and minutes of commission [Repealed effective December 31, 2024].

HISTORY: Codes, 1942, §§ 7688, 7696; Laws, 1938, ch. 139; Laws, 1948, ch. 417, § 1; Laws, 1952, ch. 330, § 1; Laws, 1956, ch. 371, § 1; Laws, 1960, ch. 394, § 1; Laws, 1964, ch. 542, § 6; Laws, 1966, ch. 445, § 23; reenacted without change, Laws, 1982, ch. 389, § 3; reenacted, Laws, 1990, ch. 530, § 3; reenacted without change, Laws, 1993, ch. 616, § 3; reenacted without change, Laws, 1996, ch. 526, § 3; reenacted without change, Laws, 1998, ch. 303, § 3; reenacted without change, Laws, 2002, ch. 452, § 3; reenacted without change, Laws, 2006, ch. 386, § 3; reenacted without change, Laws, 2008, ch. 406, § 3; reenacted without change, Laws, 2011, ch. 456, § 3; reenacted without change, Laws, 2012, ch. 542, § 3; reenacted without change, Laws, 2013, ch. 332, § 3; reenacted without change, Laws, 2016, ch. 437, § 3, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 3, eff from and after July 1, 2018;

reenacted without change, Laws, 2020, ch. 387, § 3, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 3. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-6. Establishment of Public Service Commission Regulation Fund; administration; annual audit; funding of agency expenses; deposit of monies into State General Fund [Repealed effective December 31, 2024].

HISTORY: Laws, 1987, ch. 343, § 1; reenacted and amended, Laws, 1990, ch. 530, § 4; Laws, 1991, ch. 525, § 3; reenacted without change, Laws, 1993, ch. 616, § 4; Laws, reenacted without change, Laws, 1996, ch. 526, § 4; reenacted without change, Laws, 1998, ch. 303, § 4; reenacted without change, Laws, 2002, ch. 452, § 4; reenacted without change, Laws, 2006, ch. 386, § 4; reenacted without change, Laws, 2008, ch. 406, § 4; reenacted without change, Laws, 2011, ch. 456, § 4; reenacted without change, Laws, 2012, ch. 542, § 4; reenacted without change, Laws, 2013, ch. 332, § 4; reenacted without change, Laws, 2016, ch. 437, § 4; Laws, 2016, ch. 459, § 49; Laws, 2017, 1st Ex Sess, ch. 7, § 37, eff from and after passage (approved June 23, 2017); reenacted without change, Laws, 2018, ch. 402, § 4, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 4, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 4. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-11. Acceptance by or offering to commission members, candidates or employees of gifts, passes, campaign contributions or other benefits [Repealed effective December 31, 2024].

(1) It shall be unlawful for any public service commissioner, any candidate for public service commissioner, or any employee of the Public Service Commission or Public Utilities Staff to knowingly accept any gift, pass, money, campaign contribution or any emolument or other pecuniary benefit whatsoever, either directly or indirectly, from any person interested as owner, agent or representative, or from any person acting in any respect for such owner, agent or representative of any telephone company, gas or electric utility company, or any other public utility that shall come under the jurisdiction or supervision of the Public Service Commission. Any person found guilty of violating the provisions of this subsection shall immediately forfeit his or her office or position and shall be fined not less than Five Thousand Dollars ($5,000.00), imprisoned in the State Penitentiary for not less than one (1) year, or both.

(2) It shall be unlawful for any person interested as owner, agent or representative, or any person acting in any respect for such owner, agent or

representative of any telephone company, gas or electric utility, or any other public utility that shall come under the jurisdiction or supervision of the Public Service Commission to offer any gift, pass, money, campaign contribution or any emolument or other pecuniary benefit whatsoever to any public service commissioner, any candidate for public service commissioner or any employee of the Public Service Commission or Public Utilities Staff. Any party found guilty of violating the provisions of this subsection shall be fined not less than Five Thousand Dollars ($5,000.00), or imprisoned in the State Penitentiary for not less than one (1) year, or both.

(3) For purposes of this section, the term "emolument" shall include salary, donations, contributions, loans, stock tips, vacations, trips, honorarium, directorships or consulting posts. Expenses associated with social occasions afforded public servants shall not be deemed a gift, emolument or other pecuniary benefit as defined in Section 25-4-103(k), Mississippi Code of 1972.

(4) For purposes of this section, a person who is a member of a water, gas, electric or other cooperative association regulated by the Public Service Commission shall not, by virtue of such membership, be deemed an owner, agent or representative of such association unless such person is acting in any respect for or as an owner, agent or representative of such association; nor shall a person who owns less than one-half of one percent (1/2 of 1%) in stock, the value thereof not to exceed Ten Thousand Dollars ($10,000.00), of any public utility that is regulated by the Public Service Commission, or of any holding company of such public utility, by virtue of such ownership, be deemed an owner, agent or representative of such public utility unless such person is acting in any respect for or as an owner, agent or representative of such public utility.

HISTORY: Codes, 1892, § 4274; 1906, § 4827; Hemingway's 1917, § 7612; 1930, § 7026; 1942, §§ 7688, 7807; Laws, 1938, ch. 139; Laws, 1948, ch. 417, § 1; Laws, 1952, ch. 330, § 1; Laws, 1956, ch. 371, § 1; Laws, 1960, ch. 394, § 1; Laws, 1964, ch. 542, § 6; Laws, 1966, ch. 445, § 23; reenacted without change, Laws, 1982, ch. 389, § 6; reenacted and amended, Laws, 1990, ch. 530, § 5; Laws, 1991, ch. 586, § 1; reenacted and amended, Laws, 1993, ch. 616, § 5; reenacted without change, Laws, 1996, ch. 526, § 5; reenacted without change, Laws, 1998, ch. 303, § 5; reenacted without change, Laws, 2002, ch. 452, § 5; reenacted without change, Laws, 2006, ch. 386, § 5; reenacted without change, Laws, 2008, ch. 406, § 5; reenacted without change, Laws, 2011, ch. 456, § 5; reenacted without change, Laws, 2012, ch. 542, § 5; reenacted without change, Laws, 2013, ch. 332, § 5; reenacted without change, Laws, 2016, ch. 437, § 5, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 5, eff from and after July 1, 2018; reenacted and amended, Laws, 2020, ch. 387, § 5, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment reenacted and amended the section by, in the first sentence of (1) and (2), deleting "common or contract carrier by motor vehicle" following "agent or representative of any."

OPINIONS OF THE ATTORNEY GENERAL

Facts of each case would determine if lawyer or other person could be classified as representative or agent of regulated entity; fact that lawyer or engineer has at some point in his or her professional career performed professional services for regulated entity would not per se make that lawyer or engineer representative or agent of that entity. Robinson, May 22, 1990, A.G. Op. #90-0334.

The Attorney General is unable to state that Section 601 of the Federal Aviation Administration Authorization Act of 1994 preempts the enforcement of the criminal provisions of this section. Hebert, May 18, 1995, A.G. Op. #95-0007.

Under this section, a vendor of goods which sells to the public and also makes sales to a public utility, and which is not interested as an owner, agent or representative of a public utility or acting for an owner, agent or representative of a public utility, may legally contribute to a candidate for the MPSC. Hebert, May 18, 1995, A.G. Op. #95-0007.

Under this section, an attorney who performs services for a public utility, is a person ". . . interested as a . . . representative . . ." of the public utility and consequently is an individual who is prohibited from making, either directly or indirectly, a contribution to a candidate for the MPSC whether or not that attorney has multiple clients. Hebert, May 18, 1995, A.G. Op. #95-0007.

Since interstate pipeline companies do not come within the jurisdiction or supervision of the Public Service Commission, these companies or their representatives may legally make campaign contributions to Public Service Commissioners or candidates for Public Service Commissioner. See Section 77-3-5. Hebert, December 6, 1995, A.G. Op. #95-0768.

Campaign contributions legally received from regulated utility companies during a prior Mississippi House of Representatives campaign, that were not spent during that campaign, can be used in a prospective upcoming campaign for Public Service Commissioner even though they would otherwise be prohibited contributions, so long as they were made prior to any discussion or consideration of running for Public Service Commissioner and prior to becoming a candidate for the office, as described in Miss. Code Ann. § 77-1-11. Ellington, February 9, 2007, A.G. Op. #07-00071, 2007 Miss. AG LEXIS 20.

§ 77-1-15. Employment and duties of executive secretary; funding of agency expenses; deposit of monies into State General Fund [Repealed effective December 31, 2024].

(1) There shall be an executive secretary of the commission, hereinafter referred to in this chapter as the secretary, to be appointed by the commission, by and with the advice and consent of the Senate, for the term of the commissioners. The secretary must have the same qualifications as the commissioners and shall be subject to the same disqualifications and to like penalties, except that he shall not be liable to impeachment. He shall receive a salary fixed by the Legislature. He shall take the oath of office and shall be removable at the pleasure of the commission, which may fill any vacancy until the Senate confirms a successor. The secretary shall make bond as provided for other state officers, in the sum of Ten Thousand Dollars ($10,000.00), conditioned upon the faithful performance of the duties of his office.

(2) The secretary shall collect all fees and penalties collected by or paid to the commission, and shall cover the same into the State Treasury.

(3) The secretary of the commission shall be the custodian of all records,

documents, and the seal of the commission. He shall issue all citations, subpoenas and other rightful orders and documents, and perform all other duties usually required of such officer, and as required by the commission.

(4) It shall be the duty and responsibility of the secretary to supervise and manage the offices and staff of the Public Service Commission and formulate written policies and procedures for the effective and efficient operation of the office and present these policies and procedures to the board for promulgation.

(5) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(6) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Codes, 1942, § 7689; Laws, 1938, ch. 139; Laws, 1946, ch. 352, § 2; Laws, 1948, ch. 418, § 1; Laws, 1952, ch. 330, § 2; Laws, 1958, ch. 350, § 1; Laws, 1960, ch. 394, § 2; Laws, 1966, ch. 445, § 24; reenacted without change, Laws, 1982, ch. 389, § 8; Laws, 1987, ch. 343, § 2; reenacted and amended, Laws, 1990, ch. 530, § 6; reenacted without change, Laws, 1993, ch. 616, § 6; reenacted without change, Laws, 1996, ch. 526, § 6; reenacted without change, Laws, 1998, ch. 303, § 6; reenacted without change, Laws, 2002, ch. 452, § 6; reenacted without change, Laws, 2006, ch. 386, § 6; reenacted without change, Laws, 2008, ch. 406, § 6; reenacted without change, Laws, 2011, ch. 456, § 6; reenacted without change, Laws, 2012, ch. 542, § 6; reenacted without change, Laws, 2013, ch. 332, § 6; reenacted without change, Laws, 2016, ch. 437, § 6; Laws, 2016, ch. 459, § 50, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 6, eff from and after July 1, 2018; reenacted and amended, Laws, 2020, ch. 387, § 6, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment reenacted and amended the section by, in (2), deleting "and all fees and penalties collected under the Mississippi Motor Carrier Regulatory Law of 1938 shall be covered into the Public Service Commission Regulation Fund" at the end, and making a related punctuation change.

Editor's Notes — Former § 77-1-17 authorized the Public Service Commission to employ a competent rate expert and an assistant rate expert.

§§ 77-1-17 and 77-1-21. Repealed.

Repealed by Laws, 2020, ch. 387, §§ 23–25, respectively, eff from and after July 1, 2020.

§ 77-1-17. [Codes, 1942, § 7690; Laws, 1938, ch. 139; Laws, 1946, ch. 352,§ 3; Laws, 1948, ch. 418, § 2; Laws, 1952, ch. 330, § 3; Laws, 1958, ch. 350,§ 2; Laws, 1966, ch. 445, § 25; reenacted without change, Laws, 1982, ch. 389,§ 9; reenacted and amended, Laws, 1990, ch. 530, § 7; reenacted without change, Laws, 1993, ch. 616, § 7; reenacted without change, Laws, 1996, ch. 526, § 7; reenacted without change, Laws, 1998, ch. 303, § 7; reenacted the section without change, Laws, 2002, ch. 452, § 7; reenacted without change, Laws, 2006, ch. 386, § 7; reenacted without change, Laws, 2008, ch. 406, § 7;

reenacted without change, Laws, 2011, ch. 456, § 7; reenacted without change, Laws, 2012, ch. 542, § 7; reenacted without change, Laws, 2013, ch. 332, § 7;reenacted without change, Laws, 2016, ch. 437, § 7, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 7, eff from and after July 1, 2018.]

§ 77-1-19. [Codes, 1942, § 7692; Laws, 1938, ch. 139; Laws, 1944, ch. 268, § 2; Laws, 1946, ch. 352, § 5; Laws, 1948, chs. 327, § 10, 418, § 3; Laws, 1952, ch. 330, § 4; Laws, 1958, ch. 350, § 3; Laws, 1960, ch. 394, § 3; Laws, 1966, ch. 445, § 26; Laws, 1968, ch. 535, § 1; Laws, 1974, ch. 311; Laws, 1978, ch. 377, § 1; reenacted, Laws, 1982, ch. 389, § 10; reenacted and amended, Laws, 1990, ch. 530, § 8; reenacted without change, Laws, 1996, ch. 526, § 8; reenacted without change, Laws, 1998, ch. 303, § 8; reenacted without change, Laws, 2002, ch. 452, § 8; reenacted without change, Laws, 2006, ch. 386, § 8; reenacted without change, Laws, 2008, ch. 406, § 8; reenacted without change, Laws, 2011, ch. 456, § 8; reenacted without change, Laws, 2012, ch. 542, § 8; reenacted without change, Laws, 2013, ch. 332, § 8; reenacted without change, Laws, 2016, ch. 437, § 8, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 8, eff from and after July 1, 2018.]

§ 77-1-21. [Codes, 1942, § 7692-01; Laws, 1958, ch. 505, § 2; Laws, 1962, ch. 512, § 1; Laws, 1966, ch. 445, § 27; Laws, 1982, ch. 389, § 11; reenacted, Laws, 1990, ch. 530, § 9; reenacted, Laws, 1993, ch. 616, § 8; reenacted without change, Laws, 1996, ch. 526, § 9; reenacted without change, Laws, 1998, ch. 303, § 9; reenacted without change, Laws, 2002, ch. 452, § 9; Laws, 2004, ch. 595, § 22; reenacted without change, Laws, 2006, ch. 386, § 9; reenacted without change, Laws, 2008, ch. 406, § 9; reenacted without change, Laws, 2011, ch. 456, § 9; reenacted without change, Laws, 2012, ch. 542, § 9; reenacted without change, Laws, 2013, ch. 332, § 9; reenacted without change, Laws, 2016, ch. 437, § 9, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 9, eff from and after July 1, 2018.]

Editor's Notes — Former § 77-1-17 authorized the Public Service Commission to employ a competent rate expert and an assistant rate expert.

Former § 77-1-19 authorized the Public Service Commission to employ personnel to implement the Motor Carrier Regulatory Law (§ 77-7-1 et seq.).

Former § 77-1-21 authorized the Department of Transportation to employ an enforcement officer and inspectors to implement the Motor Carrier Regulatory Law (§ 77-7-1 et seq.).

§ 77-1-25. Use of commission property and political activity regulated [Repealed effective December 31, 2024].

HISTORY: Codes, 1942, §§ 7692-07, 7806-07; Laws, 1958, ch. 505, § 8; Laws, 1970, ch. 429, § 7; reenacted without change, Laws, 1982, ch. 389, § 13; reenacted, Laws, 1990, ch. 530, § 11; reenacted and amended, Laws, 1993, ch. 616, § 9; reenacted without change, Laws, 1996, ch. 526, § 10; reenacted without change, Laws, 1998, ch. 303, § 10; reenacted without change, Laws, 2002, ch. 452, § 10; reenacted without change, Laws, 2006, ch. 386, § 10; reenacted without change, Laws, 2008, ch. 406, § 10; reenacted without change, Laws, 2011, ch. 456, § 10; reenacted without change, Laws, 2012, ch.

542, § 10; reenacted without change, Laws, 2013, ch. 332, § 10; reenacted without change, Laws, 2016, ch. 437, § 10, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 10, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 7, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 7. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-27. Payment of salaries [Repealed effective December 31, 2024].

All commission employees provided for in this chapter shall be paid out of the appropriations made to defray the expenses of the commission, upon requisitions and warrants in the same manner provided by law for the disbursements of appropriations for the commission. An itemized account shall be kept of all receipts and expenditures and shall be reported to the Legislature by the commission.

HISTORY: Codes, 1942, §§ 7691, 7693, 7806-09; Laws, 1938, ch. 139; Laws, 1944, ch. 268, §§ 1, 2; Laws, 1946, ch. 352, §§ 4, 5; Laws, 1948, ch. 327, § 11; ch. 417, § 2; Laws, 1952, ch. 330, § 5; Laws, 1956, ch. 371, §§ 2, 3; Laws, 1958, ch. 350, § 4; Laws, 1960, ch. 394, § 4; Laws, 1966, ch. 445, § 28; Laws, 1970, ch. 429, § 9; reenacted without change, Laws, 1982, ch. 389, § 14; Laws, 1987, ch. 343, § 3; reenacted and amended, Laws, 1990, ch. 530, § 12; Laws, 1991, ch. 525, § 4; Laws, 1992, ch. 496, § 59; reenacted, Laws, 1993, ch. 616, § 10; reenacted without change, Laws, 1996, ch. 526, § 11; reenacted without change, Laws, 1998, ch. 303, § 11; reenacted without change, Laws, 2002, ch. 452, § 11; reenacted without change, Laws, 2006, ch. 386, § 11; reenacted without change, Laws, 2008, ch. 406, § 11; reenacted without change, Laws, 2011, ch. 456, § 11; reenacted without change, Laws, 2012, ch. 542, § 11; reenacted without change, Laws, 2013, ch. 332, § 11; reenacted without change, Laws, 2016, ch. 437, § 11, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 11, eff from and after July 1, 2018; reenacted and amended, Laws, 2020, ch. 387, § 8, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment reenacted and amended the section by, in the first sentence, deleting "and the reasonable and necessary expenses of the administration of the duties imposed on the commission by the Motor Carrier Regulatory Law of 1938" following "in this chapter."

§ 77-1-29. Payments to and disbursements from Public Service Commission Regulation Fund; funding of agency expenses; deposit of monies into State General Fund [Repealed effective December 31, 2024].

HISTORY: Codes, 1942, § 7694; Laws, 1938, ch. 139; Laws, 1944, ch. 268, § 3; Laws, 1946, ch. 352, § 5; Laws, 1948, ch. 327, § 12; Laws, 1952, ch. 330, § 6; Laws, 1958, ch. 505, § 11; Laws, 1962, ch. 512, § 2; Laws, 1966, ch. 541, § 2; Laws, 1968, ch. 536; Laws, 1972, ch. 472, § 1; Laws, 1974, ch. 312; Laws, 1978, ch. 518, § 1;

Laws, 1981, ch. 345, § 1; reenacted, Laws, 1982, ch. 389, § 15; Laws, 1983, ch. 530; Laws, 1987, ch. 343, § 4; reenacted and amended, Laws, 1990, ch. 530, § 13; Laws, 1991, ch. 525, § 5; reenacted without change, Laws, 1993, ch. 616, § 11; reenacted without change, Laws, 1996, ch. 526, § 12; reenacted without change, Laws, 1998, ch. 303, § 12; reenacted without change, Laws, 2002, ch. 452, § 12; reenacted without change, Laws, 2006, ch. 386, § 12; reenacted without change, Laws, 2008, ch. 406, § 12; reenacted without change, Laws, 2011, ch. 456, § 12; reenacted without change, Laws, 2012, ch. 542, § 12; reenacted without change, Laws, 2013, ch. 332, § 12; reenacted without change, Laws, 2016, ch. 437, § 12; Laws, 2016, ch. 459, § 51, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 12, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 9, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 9. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-31. Docket of petitions and complaints [Repealed effective December 31, 2024].

HISTORY: Codes, 1892, § 4280; 1906, § 4832; Hemingway's 1917, § 7617; 1930, § 7031; 1942, § 7808; reenacted without change, Laws, 1982, ch. 389, § 16; reenacted, Laws, 1990, ch. 530, § 14; reenacted without change, Laws, 1993, ch. 616, § 12; reenacted without change, Laws, 1996, ch. 526, § 13; reenacted without change, Laws, 1998, ch. 303, § 13; reenacted without change, Laws, 2002, ch. 452, § 13; reenacted without change, Laws, 2006, ch. 386, § 13; reenacted without change, Laws, 2008, ch. 406, § 13; reenacted without change, Laws, 2011, ch. 456, § 13; reenacted without change, Laws, 2012, ch. 542, § 13; reenacted without change, Laws, 2013, ch. 332, § 13; reenacted without change, Laws, 2016, ch. 437, § 13, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 13, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 10, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 10. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-33. Process for witnesses; penalty for failure to testify [Repealed effective December 31, 2024].

HISTORY: Codes, 1892, § 4285; 1906, § 4837; Hemingway's 1917, § 7622; 1930, § 7034; 1942, § 7811; reenacted without change, Laws, 1982, ch. 389, § 17; reenacted and amended, Laws, 1990, ch. 530, § 15; reenacted without change, Laws, 1993, ch. 616, § 13; reenacted without change, Laws, 1996, ch. 526, § 14; reenacted without change, Laws, 1998, ch. 303, § 14; reenacted without change, Laws, 2002, ch. 452, § 14; reenacted without change, Laws, 2006, ch. 386, § 14; reenacted without change, Laws, 2008, ch. 406, § 14; reenacted without change, Laws, 2011, ch. 456, § 14; reenacted without change, Laws, 2012, ch. 542, § 14; reenacted without change, Laws, 2013, ch. 332, § 14; reenacted without change, Laws, 2016, ch. 437, § 14, eff from and after July 1,

2016; reenacted without change, Laws, 2018, ch. 402, § 14, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 11, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 11. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-35. Administration of oaths; taking of affidavits; examination of witnesses; perjury [Repealed effective December 31, 2024].

HISTORY: Codes, 1892, § 4279; 1906, § 4831; Hemingway's 1917, § 7616; 1930, § 7035; 1942, § 7812; reenacted without change, Laws, 1982, ch. 389, § 18; reenacted, Laws, 1990, ch. 530, § 16; reenacted without change, Laws, 1993, ch. 616, § 14; reenacted without change, Laws, 1996, ch. 526, § 15; reenacted without change, Laws, 1998, ch. 303, § 15; reenacted without change, Laws, 2002, ch. 452, § 15; reenacted without change, Laws, 2006, ch. 386, § 15; reenacted without change, Laws, 2008, ch. 406, § 15; reenacted without change, Laws, 2011, ch. 456, § 15; reenacted without change, Laws, 2012, ch. 542, § 15; reenacted without change, Laws, 2013, ch. 332, § 15; reenacted without change, Laws, 2016, ch. 437, § 15, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 15, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 12, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 12. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-37. Payment of witnesses [Repealed effective December 31, 2024].

HISTORY: Codes, 1892, § 4335; 1906, § 4889; Hemingway's 1917, § 7676; 1930, § 7036; 1942, § 7813; Laws, 1908, ch. 85; reenacted without change, Laws, 1982, ch. 389, § 19; reenacted, Laws, 1990, ch. 530, § 17; reenacted and amended, Laws, 1993, ch. 616, § 15; reenacted without change, Laws, 1996, ch. 526, § 16; reenacted without change, Laws, 1998, ch. 303, § 16; reenacted without change, Laws, 2002, ch. 452, § 16; reenacted without change, Laws, 2006, ch. 386, § 16; reenacted without change, Laws, 2008, ch. 406, § 16; reenacted without change, Laws, 2011, ch. 456, § 16; reenacted without change, Laws, 2012, ch. 542, § 16; reenacted without change, Laws, 2013, ch. 332, § 16; reenacted without change, Laws, 2016, ch. 437, § 16, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 16, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 13, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 13. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-39. Transcripts of oral testimony [Repealed effective December 31, 2024].

HISTORY: Codes, 1930, § 7037; 1942, § 7814; Laws, 1926, ch. 128; reenacted without change, Laws, 1982, ch. 389, § 20; reenacted and amended, Laws, 1990, ch. 530, § 18; reenacted without change, Laws, 1993, ch. 616, § 16; reenacted without change, Laws, 1996, ch. 526, § 17; reenacted without change, Laws, 1998, ch. 303, § 17; reenacted without change, Laws, 2002, ch. 452, § 17; reenacted without change, Laws, 2006, ch. 386, § 17; reenacted without change, Laws, 2008, ch. 406, § 17; reenacted without change, Laws, 2011, ch. 456, § 17; reenacted without change, Laws, 2012, ch. 542, § 17; reenacted without change, Laws, 2013, ch. 332, § 17; reenacted without change, Laws, 2016, ch. 437, § 17, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 1, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 14, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 14. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-41. Findings and determinations shall be in writing; proof and effect thereof [Repealed effective December 31, 2024].

HISTORY: Codes, 1892, § 4284; 1906, § 4836; Hemingway's 1917, § 7621; 1930, § 7038; 1942, § 7815; reenacted without change, Laws, 1982, ch. 389, § 21; reenacted, Laws, 1990, ch. 530, § 19; reenacted without change, Laws, 1993, ch. 616, § 17; reenacted without change, Laws, 1996, ch. 526, § 18; reenacted without change, Laws, 1998, ch. 303, § 18; reenacted without change, Laws, 2002, ch. 452, § 18; reenacted without change, Laws, 2006, ch. 386, § 18; reenacted without change, Laws, 2008, ch. 406, § 18; reenacted without change, Laws, 2011, ch. 456, § 18; reenacted without change, Laws, 2012, ch. 542, § 18; reenacted without change, Laws, 2013, ch. 332, § 18; reenacted without change, Laws, 2016, ch. 437, § 18, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 18, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 15, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 15. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-43. Enforcement of laws and orders, decisions and determinations of commission [Repealed effective December 31, 2024].

HISTORY: Codes, 1892, § 4286; 1906, § 4838; Hemingway's 1917, § 7623; 1930, § 7040; 1942, §§ 7701, 7817; Laws, 1938, ch. 139; reenacted without change, Laws, 1982, ch. 389, § 22; reenacted and amended, Laws, 1990, ch. 530, § 20; reenacted without change, Laws, 1993, ch. 616, § 18; reenacted without change, Laws, 1996, ch. 526, § 19; reenacted without change, 1998, ch. 303, § 19;

reenacted without change, Laws, 2002, ch. 452, § 19; reenacted without change, Laws, 2006, ch. 386, § 19; reenacted without change, Laws, 2008, ch. 406, § 19; reenacted without change, Laws, 2011, ch. 456, § 19; reenacted without change, Laws, 2012, ch. 542, § 19; reenacted without change, Laws, 2013, ch. 332, § 19; reenacted without change, Laws, 2016, ch. 437, § 19, eff from and after July 1, 2016; reenacted and amended, Laws, 2018, ch. 402, § 19, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 16, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 16. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-47. Appeal bonds; supersedeas bonds [Repealed effective December 31, 2024].

HISTORY: Codes, 1942, §§ 7684, 7700; Laws, 1938, chs. 139, 142; reenacted without change, Laws, 1982, ch. 389, § 24; reenacted, Laws, 1990, ch. 530, § 22; reenacted without change, Laws, 1993, ch. 616, § 19; reenacted without change, Laws, 1996, ch. 526, § 20; reenacted without change, Laws, 1998, ch. 303, § 20; reenacted without change, Laws, 2002, ch. 452, § 20; reenacted without change, Laws, 2006, ch. 386, § 20; reenacted without change, Laws, 2008, ch. 406, § 20; reenacted without change, Laws, 2011, ch. 456, § 20; reenacted without change, Laws, 2012, ch. 542, § 20; reenacted without change, Laws, 2013, ch. 332, § 20; reenacted without change, Laws, 2016, ch. 437, § 20, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 20, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 17, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 17. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-49. Annual reports of the commission [Repealed effective December 31, 2024].

HISTORY: Codes, 1892, § 4333; 1906, § 4887; Hemingway's 1917, § 7674; 1930, § 7041; 1942, § 7818; Laws, 1908, ch. 84; Laws, 1970, ch. 523, § 1; reenacted without change, Laws, 1982, ch. 389, § 25; reenacted, Laws, 1990, ch. 530, § 23; reenacted and amended, Laws, 1993, ch. 616, § 20; reenacted without change, Laws, 1996, ch. 526, § 21; reenacted without change, Laws, 1998, ch. 303, § 21; reenacted without change, Laws, 2002, ch. 452, § 21; reenacted without change, Laws, 2006, ch. 386, § 21; reenacted without change, Laws, 2008, ch. 406, § 21; reenacted without change, Laws, 2011, ch. 456, § 21; reenacted without change, Laws, 2012, ch. 542, § 21; reenacted without change, Laws, 2013, ch. 332, § 21; reenacted without change, Laws, 2016, ch. 437, § 21, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 21, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 18, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 18. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-51. Repeal of §§ 77-1-1 through 77-1-49.

Sections 77-1-1 through 77-1-49, Mississippi Code of 1972, which create the Public Service Commission and prescribe its powers and duties, shall stand repealed as of December 31, 2024.

HISTORY: Laws, 1979, ch. 301, § 53; Laws, 1982, ch. 389, § 26; Laws, 1990, ch. 530, § 24; Laws, 1993, ch. 616, § 21; Laws, 2002, ch. 452, § 22; Laws, 2006, ch. 386, § 22; Laws, 2008, ch. 406, § 22; Laws, 2011, ch. 456, § 22; Laws, 2012, ch. 542, § 22; Laws, 2013, ch. 332, § 22; Laws, 2016, ch. 437, § 22, eff from and after July 1, 2016; Laws, 2018, ch. 402, § 22, eff from and after July 1, 2018; Laws, 2020, ch. 387, § 19, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment extended the date of the repealer for §§ 77-1-1 through 77-1-49 by substituting "December 31, 2024" for "December 31, 2020."

§ 77-1-55. Commission authorized to hire attorneys or consultants to monitor, investigate and seek relief from existing or proposed interstate rates, charges, etc. [Repealed effective July 1, 2024].

(1) The Public Service Commission, with the aid and the assistance of the Public Utilities Staff, shall have the power to monitor, investigate, and seek relief in any appropriate federal forum from all existing or proposed interstate rates, charges, allocations and classifications, and all rules and practices in relation thereto promulgated and prescribed by or for any public utility as defined in Section 77-3-3(d)(i).

(2) The Public Service Commission, with the aid and the assistance of the Public Utilities Staff, may seek relief from any proposed or final decision, order, regulation, rule or law that has an impact on any existing or proposed interstate rate, charge, allocation or classification.

(3) For the purpose of this section, the Public Service Commission and the Executive Director of the Public Utilities Staff may each enter into professional services contracts with one or more attorneys or consultants from a competent, qualified and independent firm as may be required by the commission or the executive director. Costs associated with the professional service contracts shall not exceed One Million Five Hundred Thousand Dollars ($1,500,000.00) for each agency with respect to each rate regulated affected utility in any twelve-month period. The consultants or counsel shall submit periodically, but no less frequently than once each calendar quarter, to the executive director or the commission, as applicable, for approval of payment, itemized bills detailing the work performed. The executive director or the chairman of the commission, as applicable, shall requisition the applicable public utility to make the requisite payments to such consultants. The commission shall allow the utility to recover both the total costs the utility incurred under this section and the carrying charges for those costs through a rate rider established to recover the

costs incurred and carrying charges incurred. Such rider shall include a true-up provision to ensure actual recovery of costs paid or otherwise incurred by the utility.

(4) This section shall stand repealed from and after July 1, 2024.

HISTORY: Laws, 2012, ch. 527, § 1; Laws, 2013, ch. 332, § 23; Laws, 2016, ch. 437, § 23, eff from and after July 1, 2016; Laws, 2018, ch. 402, § 23, eff from and after July 1, 2018; Laws, 2020, ch. 387, § 20, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment extended the date of the repealer for this section by substituting "July 1, 2024" for "July 1, 2020" in (4).

CHAPTER 2.

PUBLIC UTILITIES STAFF

§ 77-2-7. Executive director of public utilities staff; appointment; qualifications; salary.

Editor's Notes — Executive Order No. 1475, I., issued by Governor Tate Reeves on April 20, 2020, provides as follows:

"I. In order to cope with and respond to the COVID-19 emergency, pursuant to Miss. Code Ann. § 33-15-11(c)(1), the provision of Miss. Code Ann. § 77-2-7(1) requiring the Mississippi Public Service Commission to submit to the Governor the name of not less than three (3) and not more than six (6) qualified candidates for the position of executive director of the public utility staff is hereby suspended, and such submissions shall be provided by the Mississippi Public Service Commission to the Governor on or before June 1, 2020."

§ 77-2-19. Establishment of Public Utilities Staff Regulation Fund; administration generally; annual audits; disbursements from fund.

Cross References — Application fees collected under grant programs and deposited to the Public Utilities Staff Regulation Fund before September 1, 2020, to be transferred to the Public Utilities Application Fund, see § 77-5-907.

CHAPTER 3.

REGULATION OF PUBLIC UTILITIES

Article 1.	Certificates of Public Convenience and Necessity; Rates; Service.	77-3-1
Article 15.	Mississippi Telephone Solicitation Act.	77-3-701
Article 17.	Caller ID Anti-spoofing Act.	77-3-801

ARTICLE 1.

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; RATES; SERVICE.

Sec.
77-3-2. Declaration of policy.

Sec.
77-3-3. Definitions.
77-3-42. Rate increase resulting from fuel adjustment clauses or riders; audits of fuel purchases.
77-3-44. Rate-regulated electric or natural gas public utilities authorized to undertake economic development activities; rate-regulated electric public utilities authorized to permit broadband service providers to use the electric delivery system.
77-3-93. Cost of purchasing electricity from non-utility generator for period in excess of 30 days included as expense item for purpose of calculating rates.

§ 77-3-1. Application of article to municipal public utilities.

OPINIONS OF THE ATTORNEY GENERAL

Senate Bill 3009, enrolled as Chapter 884, Local and Private Laws of Mississippi, 1988 does not exempt that portion of the City of Pontotoc gas utility system that extends more than one mile from the City of Pontotoc corporate limits from full regulation by the Mississippi Public Service Commission (MPSC), including the regulation of rates by the MPSC. McKinley, August 27, 1999, A.G. Op. #99-0437.

As Senate Bill 3009, enrolled as Chapter 884, Local and Private Laws of Mississippi, 1988 neither expressly nor impliedly provides the City of Pontotoc an exclusive right to provide gas service to all of Pontotoc County, the Mississippi Public Service Commission, in its discretion, may award a Certificate of Public Convenience and Necessity for gas service to some utility other than the City of Pontotoc for areas in Pontotoc County that lie outside of the one-mile corridor and are not being served by the City of Pontotoc. McKinley, August 27, 1999, A.G. Op. #99-0437.

A county may not provide potable water to an entity within a certificated area without the permission of the holder of the certificate of public necessity even though no compensation is received by the county for the water. Nowak, Apr. 16, 2004, A.G. Op. 03-0569.

Under the provisions of this section, a public utility owned by the city of Holly Springs that is providing electricity to the town of Ashland is exempt from the requirement in § 77-3-17 that it pay the town two per cent of it's gross revenue from sales to residential and commercial customers within the municipality. Stone, Nov. 19, 2004, A.G. Op. 04-0529.

§ 77-3-2. Declaration of policy.

(1) The Legislature finds and determines that the rates, services and operations of public utilities as defined in this title are affected with the public interest and that the availability of an adequate and reliable service by such public utilities to the people, economy and government of the State of Mississippi is a matter of public policy. The Legislature hereby declares to be the policy of the State of Mississippi:

(a) To provide fair regulation of public utilities in the interest of the public;

(b) To promote the inherent advantage of regulated public utilities;

(c) To promote adequate, reliable and economical service to all citizens and residents of the state;

(d) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or

unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(e) To encourage and promote harmony between public utilities, their users and the environment;

(f) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of service needed for the protection of public health and safety and for the promotion of the general welfare;

(g) To cooperate with other states and the federal government in promoting and coordinating interstate and intrastate public utility service and reliability;

(h) To encourage the continued study and research for new and innovative rate-making procedures which will protect the state, the public, the ratepayers and the utilities, and where possible reduce the costs of the rate-making process; and

(i) With respect to rate-regulated public utilities, to foster, encourage, enable and facilitate economic development in the State of Mississippi, to support and augment economic development activities, to expand deployment of existing and emerging technologies, including fiber-optic infrastructure which will foster a more reliable and resilient utility delivery system and provide customer access to enhanced services, to authorize and empower the Public Service Commission in carrying out its statutory responsibilities, and to take every opportunity to advance the economic development of the state.

(2) To these ends, therefore, authority shall be vested in the Mississippi Public Service Commission to regulate public utilities in accordance with the provisions of this title.

(3)(a) The commission shall, in addition to its other powers and duties, be authorized and empowered, in its discretion, to consider and adopt a formula type rate of return evaluation rate which may include provision for the commission to:

(i) Periodically review and adjust, if required, the utility's level of revenues based upon the actual books and records of the utility which are periodically the subject of independent audits and regulatory audits;

(ii) Review the utility's performance in certain areas or categories which may be used by the commission in the manner selected by it which may include rate incentives or penalties so long as such are found to be fair and reasonable and result in a level of revenue which is fair and reasonable; and

(iii) Use such other provisions which may be permitted by this chapter.

(b) When a formula type rate of return evaluation rate with periodic revenue adjustments is adopted by the commission, each periodic revenue adjustment will be separately considered for the purpose of determining whether a hearing is required pursuant to Section 77-3-39(1), and no such

hearing shall be required if the amount of any separate periodic adjustment to the level of revenues of the utility is not a "major change" as defined in Section 77-3-37(8).

(c) In administering any such formula type rate of return evaluation rate, the following procedures shall be observed by the commission:

(i) Each periodic evaluation shall be supported with a sworn filing by the utility incorporating the data specified in the formula rate adopted by the commission, and such data shall be verified by the commission; and

(ii) A hearing shall be required, as provided by law, to determine compliance with the formula rate plan and the accuracy of the data prior to any change in the level of revenues if the cumulative change in any calendar year exceeds the greater of Two Hundred Thousand Dollars ($200,000.00) or four percent (4%) of the annual revenues of the utility.

(d) The requirements of paragraphs (a), (b) and (c) of this subsection and other applicable provisions of Title 77, Chapter 3, Article 1, Mississippi Code of 1972, which are observed by the commission in administering such rate, are hereby declared to be procedural but are not required to be included in the rate itself.

(4) It is the intention of the Legislature to validate, retroactively to its initial adoption by the commission, any formula type rate, including any revenue adjustments effected pursuant thereto, which has heretofore been adopted by the commission. For the purposes of the retroactive validation and the administration of any formula type rate heretofore adopted by the commission, should the provisions of Title 77, Chapter 3, Article 1, Mississippi Code of 1972, conflict with any provisions of such formula type rate, Title 77, Chapter 3, Article 1, Mississippi Code of 1972, shall be interpreted to prevail and the formula type rate shall hereafter be administered or revised to conform to Title 77, Chapter 3, Article 1, Mississippi Code of 1972; provided, however, such conflict, if any, shall not be held to invalidate the retroactive effect of this section upon such rate.

HISTORY: Laws, 1983, ch. 467, § 3; Laws, 1989, ch. 304, § 1; Laws, 1990 Ex Sess, ch. 48, § 1; Laws, 2015, ch. 360, § 2, eff from and after July 1, 2015; Laws, 2021, ch. 477, § 1, eff from and after passage (approved April 22, 2021).

Amendment Notes — The 2021 amendment, effective April 22, 2021, in (1)(i), inserted "to expand deployment of existing and emerging technologies...provide customer access to enhanced services" and made related changes.

§ 77-3-3. Definitions.

As used in this chapter:

(a) The term "corporation" includes a private or public corporation, a municipality, an association, a joint-stock association or a business trust.

(b) The term "person" includes a natural person, a partnership of two (2) or more persons having a joint or common interest, a cooperative, nonprofit, limited dividend or mutual association, a corporation, or any other legal entity.

(c) The term "municipality" includes any incorporated city, town or village.

(d) The term "public utility" includes persons and corporations, or their lessees, trustees and receivers now or hereafter owning or operating in this state equipment or facilities for:

(i) The generation, manufacture, transmission or distribution of electricity to or for the public for compensation;

(ii) The transmission, sale, sale for resale, or distribution of natural, artificial, or mixed natural and artificial gas to the public for compensation by means of transportation, transmission, or distribution facilities and equipment located within this state; however, the term shall not include the production and gathering of natural gas, the sale of natural gas in or within the vicinity of the field where produced, or the distribution or sale of liquefied petroleum gas or the sale to the ultimate consumer of natural gas for use as a motor vehicle fuel;

(iii) The transmission, conveyance or reception of any message over wire, of writing, signs, signals, pictures and sounds of all kinds by or for the public, where such service is offered to the public for compensation, and the furnishing, or the furnishing and maintenance, of equipment or facilities to the public, for compensation, for use as a private communications system or part thereof; however, no person or corporation not otherwise a public utility within the meaning of this chapter shall be deemed such solely because of engaging in this state in the furnishing, for private use as last aforementioned, and moreover, nothing in this chapter shall be construed to apply to television stations, radio stations, community television antenna services, video services, Voice over Internet Protocol services ("VoIP"), any wireless services, including commercial mobile services, Internet Protocol ("IP") - enabled services or broadband services; and

(iv) The transmission, distribution, sale or resale of water to the public for compensation, or the collection, transmission, treatment or disposal of sewage, or otherwise operating a sewage disposal service, to or for the public for compensation.

The term "public utility" shall not include any person not otherwise a public utility, who furnishes the services or commodity described in this paragraph only to himself, his employees or tenants as an incident of such employee service or tenancy, if such services are not sold or resold to such tenants or employees on a metered or consumption basis other than the submetering authorized under Section 77-3-97.

A public utility's business other than of the character defined in subparagraphs (i) through (iv) of this paragraph is not subject to the provisions of this chapter.

(e) The term "rate" means and includes every compensation, charge, fare, toll, customer deposit, rental and classification, or the formula or method by which such may be determined, or any of them, demanded, observed, charged or collected by any public utility for any service, product

or commodity described in this section, offered by it to the public, and any rules, regulations, practices or contracts relating to any such compensation, charge, fare, toll, rental or classification; however, the term "rate" shall not include charges for electrical current furnished, delivered or sold by one (1) public utility to another for resale.

(f) The word "commission" shall refer to the Public Service Commission of the State of Mississippi, as now existing, unless otherwise indicated.

(g) The term "affiliated interest" or "affiliate" includes:

(i) Any person or corporation owning or holding, directly or indirectly, twenty-five percent (25%) or more of the voting securities of a public utility;

(ii) Any person or corporation in any chain of successive ownership of twenty-five percent (25%) or more of the voting securities of a public utility;

(iii) Any corporation of which fifteen percent (15%) or more of the voting securities is owned or controlled, directly or indirectly, by a public utility;

(iv) Any corporation of which twenty-five percent (25%) or more of the voting securities is owned or controlled, directly or indirectly, by any person or corporation that owns or controls, directly or indirectly, twenty-five percent (25%) or more of the voting securities of any public utility or by any person or corporation in any chain of successive ownership of twenty-five percent (25%) of such securities;

(v) Any person who is an officer or director of a public utility or of any corporation in any chain of successive ownership of fifteen percent (15%) or more of voting securities of a public utility; or

(vi) Any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a public utility, or over which a public utility exercises such control, or that is under a common control with a public utility, such control being the possession, directly or indirectly, of the power to direct or cause the discretion of the management and policies of another, whether such power is established through ownership of voting securities or by any other direct or indirect means.

However, the term "affiliated interest" or "affiliate" shall not include a joint agency organized pursuant to Section 77-5-701 et seq., nor a member municipality thereof.

(h) The term "facilities" includes all the plant and equipment of a public utility, used or useful in furnishing public utility service, including all real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished or supplied for, by or in connection with its public utility business.

(i) The term "cost of service" includes operating expenses, taxes, depreciation, net revenue and operating revenue requirement at a claimed rate of return from public utility operations.

(j) The term "lead-lag study" includes an analysis to determine the amount of capital which investors in a public utility, the rates of which are subject to regulation under the provisions of this chapter, must provide to meet the day-to-day operating costs of the public utility prior to the time such costs are recovered from customers, and the measurement of (i) the lag in collecting from the customer the cost of providing service, and (ii) the lag in paying the cost of providing service by the public utility.

(k) The term "broadband services" means any service that consists of or includes a high-speed access capability to transmit at a rate that is not less than two hundred (200) kilobits per second either in the upstream or downstream direction and either:

(i) Is used to provide access to the internet, or

(ii) Provides computer processing, information storage, information content or protocol conversion, including any service applications or information service provided over such high-speed access service.

(*l*) The term "video services" means video programming services without regard to delivery technology, including Internet Protocol technology ("Internet Protocol television or IPTV") and video programming provided as a part of a service that enables users to access content, information, email or other services offered over the public internet. The term "video programming" means any programming as defined in 47 USCS Section 522(20).

(m) The term "Voice over Internet Protocol services" or "VoIP services" means any service that: (i) enables real-time, two-way voice communications that originate from or terminate to the user's location in Internet Protocol or any successor protocol; (ii) uses a broadband connection from the user's location; and (iii) permits users generally to receive calls that originate on the Public Switched Telephone Network and to terminate calls to the Public Switched Telephone Network.

(n) The term "commercial mobile services" means any services as defined in 47 USCS Section 332(d).

(o) The term "Internet Protocol-enabled services" or "IP-enabled services" means any service, capability, functionality, or application provided using Internet Protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet Protocol format, or any successor format, regardless of whether the communications is voice, data or video. Nothing contained in this paragraph shall apply to retail services that are tariffed by the commission.

(p) "Broadband service provider" means an entity that provides broadband services to others on a wholesale basis or to end-use customers on a retail basis.

(q) "Broadband operator" means a broadband service provider that uses the electric delivery system of any public utility of the type as defined in paragraph (d)(i) of this section with the public utility's consent to provide broadband services.

(r) "Electric delivery system" means the poles, lines, fiber, cables, broadband system, materials, equipment, easements and other facilities or

properties used by any public utility of the type as defined in paragraph (d)(i) of this section to deliver or facilitate the delivery, sale or use of electric energy.

HISTORY: Codes, 1942, § 7716-01; Laws, 1956, ch. 372, § 1; Laws, 1968, ch. 502, § 1; Laws, 1983, ch. 467, § 4; Laws, 1988, ch. 310, § 1; Laws, 1990, ch. 530, § 41; Laws, 1993, ch. 304, § 1; Laws, 2002, ch. 513, § 2; Laws, 2005, ch. 305, § 1; Laws, 2012, ch. 447, § 1, eff from and after July 1, 2012; Laws, 2018, ch. 368, § 1, eff from and after passage (approved March 16, 2018).; Laws, 2021, ch. 477, § 2, eff from and after passage (approved April 22, 2021).

Amendment Notes — The 2021 amendment, effective April 22, 2021, in (e), inserted "(1)"; added (p) through (r); and made minor stylistic and punctuation changes.

JUDICIAL DECISIONS

3. "Rate."

In the case of a billing error by an electric company, the circuit court did not err in denying the customer's motion to stay the proceedings and by holding that the Mississippi Public Service Commission lacked jurisdiction because the circuit court correctly classified the dispute as one involving rates as the electric company's failure to apply the correct multiplier to the customer's account pertained to the formula or method by which its charges could be determined; and because the electric company sought compensation for a charge related to a service, product, or commodity it supplied the customer. Door Shop, Inc. v. Alcorn Cty. Elec. Power Ass'n, 261 So. 3d 1099, 2018 Miss. LEXIS 443 (Miss. 2018).

§ 77-3-5. Jurisdiction and powers of commission.

JUDICIAL DECISIONS

2. Jurisdiction.

In the case of a billing error by an electric company, the circuit court did not err in denying the customer's motion to stay the proceedings and by holding that the Mississippi Public Service Commission lacked jurisdiction because the circuit court correctly classified the dispute as one involving rates as the electric company's failure to apply the correct multiplier to the customer's account pertained to the formula or method by which its charges could be determined; and because the electric company sought compensation for a charge related to a service, product, or commodity it supplied the customer. Door Shop, Inc. v. Alcorn Cty. Elec. Power Ass'n, 261 So. 3d 1099, 2018 Miss. LEXIS 443 (Miss. 2018).

OPINIONS OF THE ATTORNEY GENERAL

Since interstate pipeline companies do not come within the jurisdiction or supervision of the Public Service Commission, these companies or their representatives

may legally make campaign contributions to Public Service Commissioners or candidates for Public Service Commissioner. See Section 77-1-11. Hebert, December 6, 1995, A.G. Op. #95-0768.

Senate Bill 3009, enrolled as Chapter 884, Local and Private Laws of Mississippi, 1988 does not exempt that portion of the City of Pontotoc gas utility system that extends more than one mile from the City of Pontotoc corporate limits from full regulation by the Mississippi Public Service Commission (MPSC), including the regulation of rates by the MPSC. McKinley, August 27, 1999, A.G. Op. #99-0437.

§ 77-3-11. Certificate of public convenience and necessity required; exceptions; complaints prompting hearing as to adequacy of service.

OPINIONS OF THE ATTORNEY GENERAL

If municipally owned plant, project or development, route, line or system or extension thereof is contemplated in area which has been certificated to another utility, certificate authorizing same must first be obtained from Mississippi Public Service Commission. Leslie, July 15, 1992, A.G. Op. #92-0512.

Since a certificate of public convenience and necessity granted by the Public Service Commission authorizes the intrastate sale of water to the public, the City of Southaven may provide water to a municipal fire station in the Pleasant Hill Water Association certificated area. Wise, September 25, 1998, A.G. Op. #98-0539.

§ 77-3-13. Issuance of certificates; temporary certificates; cancelability review upon change of ownership.

OPINIONS OF THE ATTORNEY GENERAL

If municipally owned plant, project or development, route, line or system or extension thereof is contemplated in area which has been certificated to another utility, certificate authorizing same must first be obtained from Mississippi Public Service Commission. Leslie, July 15, 1992, A.G. Op. #92-0512.

§ 77-3-17. Operation of public utility following expiration of municipal franchise; municipal acquisition of utility.

OPINIONS OF THE ATTORNEY GENERAL

Section 77-3-17 makes it clear that power cooperatives must pay two percent of all residential and commercial gross revenues to the municipality in which they are located. Thus, it makes no difference how many various categories, meter rates or charges the cooperative utilizes in determining what fee must be paid to the

municipality. Ringer, August 30, 1996, A.G. Op. #96-0557.

An electric power association was to be responsible to a city for 2 percent of its gross revenue from sales to both residential and commercial customers in the part of the city which it served. Brand, May 1, 2000, A.G. Op. #2000-0202.

Pursuant to § 77-3-17 power cooperatives must pay a franchise fee of two percent of all residential and commercial gross revenues to the municipality in which they are located; it makes no difference how many categories, meter rates or charges the cooperative utilizes in determining what fee must be paid. Mitchell, Sept. 20, 2002, A.G. Op. #02-0510.

There is no difference in revenue derived from commercial customers and industrial customers in calculating gross revenues for the purposes of payment of the franchise fee by a power cooperative. Mitchell, Sept. 20, 2002, A.G. Op. #02-0510.

All electricity sold in a municipality by a power cooperative be included in the calculation of gross revenues. Mitchell, Sept. 20, 2002, A.G. Op. #02-0510.

If a power cooperative has excluded revenues from sales to industrial customers in calculating the amount of the franchise fee, then it may owe the city the fees from these sales to industrial customers. Mitchell, Sept. 20, 2002, A.G. Op. #02-0510.

A city is mandated to collect franchise fees from utility companies, telephone companies and rural electric cooperatives pursuant to § 77-3-17 and may enforce payment of franchise fees in a court of competent jurisdiction. Mitchell, Sept. 20, 2002, A.G. Op. #02-0510.

Payment of franchise fees by public utilities that operate in municipalities is required by § 77-3-17 which does not state that the utilities must have a written franchise agreement with the municipalities as a condition for payment of the fees. Mitchell, Sept. 20, 2002, A.G. Op. #02-0510.

Under the provisions of § 77-3-1, a public utility owned by the city of Holly Springs that is providing electricity to the town of Ashland is exempt from the requirement in this section that it pay the town two percent of it's gross revenue from sales to residential and commercial customers within the municipality. Stone, Nov. 19, 2004, A.G. Op. 04-0529.

A municipality has the authority to acquire by eminent domain the facilities of any utility within the corporate limits of such municipality, but may not acquire by eminent domain those facilities of a utility located outside the municipal limits. Helmert, Oct. 28, 2005, A.G. Op. 05-0518.

A water and/or sewer utility certificated by the Public Service Commission which has not operated under a previously expired franchise granted by a municipality is not subject to the 2% fee imposed by Section 77-3-17 upon the annexation of all or a portion of its certificated area into a municipality's corporate limits. McCluer, Nov. 10, 2006, A.G. Op. 06-0526.

§ 77-3-23. Procedure for sale, assignment, lease or transfer of certificate.

OPINIONS OF THE ATTORNEY GENERAL

There does not appear to be any prohibition of negotiated arrangement made with water system to provide free sewer hookups to all members of water association as of date of transfer. Woods Oct. 21, 1993, A.G. Op. #93-0663.

§ 77-3-35. Regulation of rates and charges generally; approval of certain contracts of utilities; regulation of provision of telecommunication services; adoption of alternative methods of regulation; Public Service Commission authorized to regulate only rates, terms and conditions of certain switched access services and single-line flat rate voice communication services; incumbent local exchange carrier to provide primary single-line flat rate voice communication service to premises of permanent residence or business within its franchised service territory if cost to requesting party does not exceed certain amount; commission to retain exclusive original jurisdiction over customer complaints for services continuing to be regulated; certain telecommunication utilities required only to file financial or service quality information required to be filed with Federal Communications Commission.

OPINIONS OF THE ATTORNEY GENERAL

Requiring "enhancements" to electric service provided by public utilities, such as steel versus wood poles and underground versus above-ground lines, constitutes a form of ratemaking which is regulated by the Mississippi Public Service Commission. Although a municipality may require lines to be located underground or to be constructed with certain materials, same is subject to the rate schedules approved by MPSC. Sorrell, Mar. 9, 2004, A.G. Op. 04-0099 modified. Waites, Nov. 9, 2004, A.G. Op. 04-0446.

§ 77-3-42. Rate increase resulting from fuel adjustment clauses or riders; audits of fuel purchases.

(1)(a) No public utility, the rates of which are subject to regulation under the provisions of this chapter, shall increase its rate or rate schedule in addition to its base rate as a result of what is commonly referred to as "fuel adjustment clauses" increase or "fuel adjustment riders" if the application of such clause or rider shall result in ultimate cost recovery exceeding the actual cost of fuel burned or consumed in its generating facilities and the cost of purchased energy.

(b) For the purpose of such fuel adjustment clause or rider, the cost of fuel as used herein shall include only the actual cost of the fuel and its transportation and may include such other cost items which are as of the effective date of this section allowed by the federal energy regulatory commission for inclusion in wholesale fuel adjustment clauses under its jurisdiction. In addition thereto fuel cost may include direct costs associated with burning the fuel at the generating plant, such as fuel-handling expenses and the cost of fuel sampling and analysis.

(2)(a) The commission is hereby directed to cause a continuous monitoring by the public utilities staff and a complete audit, as necessary but not less than annually, of all fuel purchases for which fuel adjustment clauses or riders have been placed in effect prior to and after the effective date of this section, which shall totally verify fuel costs as might be consumed in generating plants and all purchased energy of such electric utilities in Mississippi with said audit being based upon generally accepted auditing standards which would accurately provide detailed information as to the actual monthly utility fuel costs. Such audit shall be completely independent of any audit performed on behalf of such utility.

(b) The commission is hereby directed to promulgate rules and regulations, not inconsistent with the laws, (i) to define allowable costs for inclusion in fuel adjustments, (ii) to establish guidelines for defining what elements constitute a just and reasonable fuel adjustment clause or rider, (iii) to establish guidelines for defining what elements constitute efficient and economical procurement and use of energy and fuel, and (iv) to establish general guidelines for making the required review of fuel adjustment clauses or riders as required by this section. Such rules and regulations shall be spread upon the minutes of the commission.

(c) Such audits shall include (i) a determination if fuel and associated costs are properly identified and recorded in the appropriate uniform system of accounts, (ii) a determination if purchased energy and associated costs are properly identified, (iii) an assessment of a utility's practices for economical purchase and use of fuel and electric energy, and (iv) an assessment of the relevant contract terms and conditions and any variations from contract terms.

(3) The audits required by this section shall extend to the fuel acquisition activities of any corporation which is owned in whole or in part by any such public utility under the jurisdiction of the commission or owned in whole or in part by a public utility holding company which is the parent company of any public utility under the jurisdiction of the commission. Public utilities under the jurisdiction of this commission, the rates of which are subject to regulation under the provisions of this chapter, shall not purchase fuel and/or energy from a company or corporation which is owned in whole or in part by that public utility or by the parent company of that public utility unless the selling company or corporation assents to audits as provided for under this section.

(4) Upon receipt of each audit report, the certified public accountant of the public utilities staff shall review the report and furnish the commissioners with a written summary of, and his comments on, the report. The commission shall meet within one (1) week after receipt of the accountant's summary, and shall spread upon the minutes of the commission that it has reviewed said summary and further shall describe any action which it takes regarding the audit report or the fact that no action was required. Any costs included in a fuel adjustment clause or rider by a public utility under the jurisdiction of the commission found in violation of this section shall, by order of the commission, be refunded to the appropriate person or persons. In lieu of payment, the

utility may credit the service account with the amount due under this subsection if the consumer entitled to the refund is, at that time, a consumer of the utility.

(5) Periodically, and not less frequently than annually, the commission shall review the audit reports, the reports of the certified public accountant of the public utilities staff, any reports of the public utilities staff relating to its monitoring of fuel purchases, and all other relevant information relating to fuel purchases, fuel adjustment clauses or riders, and purchased energy for the purpose of determining (a) whether or not the utility is properly and correctly employing the use of the fuel adjustment clause or rider applicable to its operations and billing procedures, (b) whether or not the utility has engaged in practices in the acquisition of fuel or purchased energy which are efficient and economical, and (c) whether or not there is reason to question the practices, contracts, operations or procedures of the utility in the purchase or acquisition of fuel or purchased energy relative to efficiency, economy and the public interest.

If the commission, after following the procedures described above, has reasonable cause to believe that inefficient or uneconomical procurement or use of fuel or purchased energy has resulted in unreasonable or unjust charges or costs to the consumers, then the commission shall initiate a procedure for hearing as provided for in Section 77-3-47 for the purpose of determining whether or not any of the costs or charges included in the fuel adjustment charges to the consumers were unreasonable or unjust. If the commission upon hearing shall find that any charges for the purchase or procurement of fuel or purchased energy were unreasonable or unjust, then the commission shall order that such costs or charges be refunded to the appropriate person or persons together with interest at the same rate prescribed in Section 77-3-39, Section 77-3-69 and Section 77-3-71. In lieu of payment, the utility may credit the service account with the amount due under this subsection if the consumer entitled to the refund is, at that time, a consumer of the utility.

(6)(a) The commission shall maintain at all times complete and current data relating to sales and purchases of electric capacity of all utilities, including copies of contracts and agreements for the purchase of electric capacity, amendments to such contracts, records of purchases and sales of electric capacity, and all other relevant information and data deemed appropriate by the commission for carrying out the provisions of this section.

(b) The commission is hereby directed to review, not less frequently than annually, the information and data described above. If, from said review the commission has reasonable cause to believe that inefficient or uneconomical sales or purchases of electric capacity by a utility, the rates of which are subject to regulation by the commission, have resulted in unreasonable or unjust charges or costs to the consumers, then the commission shall initiate a procedure for hearing as provided for in Section 77-3-47 for the purpose of determining whether or not any of the costs or charges for sales or purchases of electric capacity included in the charges to consumers were unreasonable or unjust. If the commission, upon hearing, shall find

that any such charges for the sale or purchase of electric capacity were unreasonable or unjust, then the commission shall order that such costs or charges be refunded to the appropriate person or persons, together with interest thereon at the same rate prescribed in Section 77-3-39, Section 77-3-69 and Section 77-3-71. In lieu of payment, the utility may credit the service account with the amount due under this subsection if the consumer entitled to the refund is, at that time, a consumer of the utility.

(7) The commission shall provide a full and complete report of said audits to the Legislature on or before March 15 of each year. The report shall include certification by the commission that the information is true and correct as well as other clarifications of the audit information and any recommendations for correcting imperfections in statutes relative to existing fuel or purchased gas adjustments.

(8) Nothing in this section shall prohibit the commission from entering an order in a declared emergency allowing public utilities under such emergency circumstances to adjust their rates for a period not to exceed sixty (60) days upon declaration of said emergency. There shall be a full hearing and a complete and total accounting as to total costs of said commission order to public utilities customers, with detailed accounting of such emergency fuel adjustment clause order being made available to the public.

(9) This section shall not apply to a municipality, including a joint agency organized pursuant to Section 77-5-701 et seq., as amended.

HISTORY: Laws, 1978, ch. 507, § 1(3); Laws, 1983, ch. 467, § 19, eff from and after passage (approved April 6, 1983); Laws, 2020, ch. 387, § 22, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (7), substituted "March 15 of each year" for "January 15 of each year"; and made some minor stylistic and punctuation changes.

§ 77-3-44. Rate-regulated electric or natural gas public utilities authorized to undertake economic development activities; rate-regulated electric public utilities authorized to permit broadband service providers to use the electric delivery system.

(1) Any rate-regulated electric or natural gas public utility with certificated service area in Mississippi may undertake economic development activities, whether directly or indirectly, including activities such as providing capital, or investment in or acquisition and development of business or industrial sites and the necessary infrastructure or services needed to attract new or existing businesses or industry, to create or maintain employment opportunities, or expansion of fiber-optic infrastructure or otherwise to positively impact or in some manner promote the sale of electric energy or natural gas within its certificated service area. Any facilities developed, constructed or acquired in support of the activities described in this section, including

fiber-optic infrastructure for which a certificate of public convenience and necessity or other commission approval has been granted after July 1, 2015, as well as any capital investment in natural gas reserves made directly or indirectly by an electric or natural gas public utility to foster long-term stability in the cost of fuel, may be deemed used and useful in the provision of electric or natural gas service regardless of whether or not any end-use customers are taking service from said facilities or investment and otherwise recoverable through the utility's rates.

(2)(a) In addition, to further expand fiber-optic infrastructure in the state, any rate-regulated public utility of the type as defined in Section 77-3-3(d)(i) may grant permission to broadband service providers to use the electric delivery system, including without limitation the fiber-optic infrastructure, of the public utility to provide broadband services or other similar services as defined in Section 77-3-3(k) through (o). To the extent a rate-regulated electric public utility grants permission to any broadband service provider to use any part of the utility's electric delivery system, including without limitation its fiber-optic infrastructure, it must grant such permission on a nonexclusive basis.

(b) The public utility shall not: (i) allow the use of its electric delivery system by a broadband operator to provide broadband services as defined above to diminish the reliability of the electric delivery system; (ii) require any person to purchase broadband services as a condition of receiving or continuing to receive electric service; or (iii) disconnect, or threaten to disconnect, electric service to any customer due to the customer's failure to pay for broadband services. Any complaint related to a public utility's permissive offer of use pursuant to this paragraph (b) shall be brought before and resolved by the Public Service Commission.

(c) In addition, to further expand fiber-optic infrastructure and economic development in the state, any public utility, including electric cooperatives, of the type as defined in Section 77-3-3(d)(i) may grant permission to a retail customer with a nonaggregated load greater than twenty (20) megawatts to construct, install, or maintain above or underground fiber-optic infrastructure on the public utility's existing right-of-way of its electric delivery system.

(d) In instances where a landowner has previously been compensated for the use of his land through a right-of-way instrument with a public utility, the use of the public utility's electric delivery system for the provision of broadband services to a broadband operator or use of the public utility's existing right-of-way on its electric delivery system by a retail customer to construct, install, or maintain above or underground fiber-optic infrastructure shall not be considered an additional burden on the real property upon which the public utility's electric delivery system is located and shall not require the public utility, the broadband operator or retail customer to obtain the consent of anyone having an interest in the real property upon which the public utility's electric delivery system is located.

(e) If a portion of a public utility's electric delivery system is used by a broadband operator for the provision of broadband services or a portion of a

public utility's right-of-way is used by a retail customer to construct, install, or maintain above or underground fiber-optic infrastructure and the landowner of the real property on which such portion is located believes his property has been damaged by such use, the landowner may petition the circuit court of the county in which the property is situated for any damages to which the landowner may be entitled under this subsection:

(i) The petition allowed and damages recoverable under this subsection shall be the landowner's exclusive remedy, and the landowner shall not be entitled to assert any other theory, claims or causes of action nor recover any other damages, punitive damages, costs, attorneys' fees, or other relief.

(ii) The recoverable damages, if any, shall be recoverable only from the broadband operator or retail customer and not from the public utility.

(iii) The damages recoverable shall be an amount equal to the difference between 1. the fair market value of the landowner's interest in the real property immediately before the public utility's electric delivery system on the owner's property was first used by the broadband operator or retail customer for the provision of broadband services, and 2. the fair market value of the landowner's interest in the real property immediately after the public utility's electric delivery system on the landowner's property was first used by the broadband operator or retail customer for the provision of broadband services. The before-and-after values must be established by the testimony of a qualified real estate appraiser. The damages, if any, shall be fixed and shall not be deemed to continue, accumulate, or accrue. The court shall, as part of its judgment, confirm the rights granted by the public utility to the broadband operator or retail customer and their respective successors and assigns for the placement or use of a broadband system on or as part of the electric delivery system. The judgment will have the same effect of a conveyance executed in due form of law and shall run with the land; and a certified copy of said judgment may be filed by the broadband operator retail customer in the land records of the county in which the subject property is located.

(iv) Evidence of past, current or future revenues or profits derived or to be derived by a broadband operator or retail customer from providing broadband services is not admissible for any purpose in any such proceeding.

(v) The landowner shall not be entitled to any damages or other relief relating to any broadband system or portion thereof that is located on the landowner's property or any fiber-optic infrastructure by the retail customer that is located on the landowner's property and is used or could be used by the electric public utility for its own operations.

(vi) The landowner shall not be entitled to any relief or damages if an easement has been granted to the broadband operator or retail customer, if the landowner has authorized the public utility to use or allow others to use its electric delivery system for the provision of broadband services, or if the landowner has authorized the public utility to use its existing

right-of-way to construct, install, or maintain above or underground fiber-optic infrastructure.

(f) Nothing in this section shall affect, abrogate, or eliminate in any way any obligation of a rate-regulated, public utility or broadband operator to comply with any applicable safety and permitting requirements of any railroad company or any state governmental body or agency with respect to property that is held or controlled by such railroad company or state governmental body or agency, as the case may be, and in, on, over, or across which an easement is located.

(g) All costs paid by a rate-regulated public utility to acquire right-of-way shall be considered cost of service and recovered through rates, and all revenue collected by a rate-regulated public utility from third-party use of public utility right-of-way shall be credited back to customers in a comparable manner.

The Public Service Commission shall establish a mechanism for electric utility revenues deriving from the provision of competitive broadband services such that electric service customers receive an annual credit, adjusted annually, for any wholesale revenues derived from fiber-optic infrastructure.

HISTORY: Laws, 2015, ch. 360, § 3; Laws, 2017, ch. 322, § 1, eff from and after passage (approved Mar. 10, 2017); Laws, 2021, ch. 477, § 3, eff from and after passage (approved April 22, 2021).

Amendment Notes — The 2021 amendment, effective April 22, 2021, in (1), inserted "or expansion of fiber-optic infrastructure" in the first sentence, and "including fiber-optic infrastructure" in the second sentence; and added (2).

§ 77-3-87. Utilities taxed for expense of regulation by commission; collection of tax; adjustment of tax rate; funding of agency expenses; deposit of monies into State General Fund.

All reasonable and necessary expenses of the administration of the duties imposed on the public utilities staff and on the commission by Title 77, Mississippi Code of 1972, excluding the reasonable and necessary expenses of the administration and enforcement by the commission of the laws of this state pursuant to Chapters 7 and 9, Title 77, Mississippi Code of 1972, shall be provided as follows: There is hereby levied a tax upon (a) all utilities, the rates of which are subject to regulation by the provisions of this chapter and upon (b) all utilities not subject to such rate regulation which furnish to the ultimate consumer utility services of the type described by subparagraph (i) of paragraph (d) of Section 77-3-3 and otherwise subject to regulation by the provisions of this chapter, such levy to be effective on the first day of each year and to be calculated as follows: The rate of the tax shall be one hundred sixty-four thousandths of one percent ($^{164}/_{1000}$ of 1%) per year, of the gross revenues from the intrastate operations of the utilities taxed under this section. The rate of the tax for electric power associations and rural electrifi-

cation authorities shall be ninety thousandths of one percent ($^{90}/_{1000}$ of 1%) per year of the gross revenues from the intrastate operations of electric power associations and rural electrification authorities taxed under this section. Effective July 1, 2017, the sum of all taxes levied by this section shall not exceed the total legislative appropriation of monies for the Public Utilities staff and the Public Service Commission for the ensuing fiscal year. The commission and the executive director of the public utilities staff shall certify to the Department of Revenue the amount of legislative appropriations of monies for the regulation of utilities. The Department of Revenue shall adjust the tax rates on a pro rata basis to generate the necessary revenues established by such legislative appropriations. Each utility which is subject to the tax levied by this section shall file a statement of its gross revenue by April 1 of each year showing the gross revenue for the preceding year's operation. These statements of gross revenue shall be filed with the Department of Revenue on forms prescribed and furnished by the Department of Revenue. The Department of Revenue shall file a copy of these statements of gross revenue with the public utilities staff and the commission. The Department of Revenue shall calculate the amount of tax to be paid by each of the utilities and shall submit a statement thereof to the respective utilities, and the amount shown due in the statements to the utilities shall be paid by them within thirty (30) days thereafter to the Department of Revenue. The Department of Revenue shall furnish the public utilities staff and the commission with an itemized list showing gross and net revenues, assessments, tax collections and other related information for the respective utilities. The Department of Revenue shall deposit these funds into the General Fund if the State Treasury on the same day collected.

All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of such chapter, and all other duties and requirements imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this chapter, and the Commissioner of Revenue shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the Mississippi Sales Tax Law except where there is a conflict, then the provisions of this chapter shall control. The term "gross revenue " as used in this section is the total amount of all revenue derived by each of the utilities from its intrastate operations, which are subject to rate regulation under the provisions of this chapter or which constitute utility services of the type described by subparagraph (i) of paragraph (d) of Section 77-3-3 and which are regulated by this chapter and furnished to ultimate consumers. The Department of Revenue is hereby authorized to use all tax returns of any utilities available to it and to make audits as may be deemed necessary of all records of utilities in order to correctly determine the amount of such gross revenue.

All proceeds of the above-mentioned tax are hereby allocated to the public utilities staff and to the commission in the manner provided in this section for the purpose of this chapter.

Each utility subject to the provisions of this section shall be allowed to recover, through the use of a rate adjustment clause or rider, the total amount of taxes paid by the utility pursuant to this section for the reasonable and necessary expenses of the commission and the public utilities staff.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section

HISTORY: Codes, 1942, § 7716-36; Laws, 1956, ch. 372, § 36; Laws, 1966, ch. 626, § 1; Laws, 1968, ch. 505, § 1; Laws, 1970, ch. 427, § 1; Laws, 1973, ch. 443, § 1; Laws, 1974, ch. 369; Laws, 1977, ch. 436; Laws, 1980, ch. 559, § 1; Laws, 1983, ch. 467, § 30; Laws, 1984, ch. 478, § 31; Laws, 1987, ch. 343, § 6; Laws, 1991, ch. 525, § 1; Laws, 1992, ch. 517, § 1; reenacted and amended, Laws, 1993, ch. 537, § 1; Laws, 1998, ch. 458, § 4; Laws, 2000, ch. 613, § 1; Laws, 2016, ch. 459, § 48; Laws, 2017, 1st Ex Sess, ch. 7, § 38, eff from and after passage (approved June 23, 2017).

Editor's Notes — This section is set out in the supplement to correct an error in the third and fourth sentences of the section as the section appeared in the 2018 Replacement Volume 17.

§ 77-3-93. Cost of purchasing electricity from non-utility generator for period in excess of 30 days included as expense item for purpose of calculating rates.

(1) Whenever a utility purchases at wholesale from a non-utility generator or some non-associated source all or a portion of its electric capacity and/or energy requirements for a period in excess of thirty (30) days, such utility shall be entitled to include as expense items in its revenue requirements, for the purpose of the calculation of its rates for retail service, the cost of such capacity and energy so purchased, and in addition to such cost, an amount representing a return on the capacity purchased over the period of the test year which is being used to calculate the revenue requirements. This amount shall be calculated using the return allowed by the commission as provided in Section 77-3-95. Notwithstanding the above or any provision of law to the contrary, for any renewable power purchase entered into after July 1, 2020, including, but not limited to, solar, wind, biomass or storage, a utility shall be entitled to incorporate renewable purchased costs in its rate base.

(2) Nothing in Sections 77-3-91 through 77-3-95 shall be interpreted to allow a return on the energy purchased by a utility pursuant to its obligation to purchase energy under the federal Public Utilities Regulatory Policy Act of 1978.

HISTORY: Laws, 1994, ch. 316, § 2, eff from and after passage (approved March 10, 1994); Laws, 2020, ch. 387, § 21, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment added the last sentence in (1).

ARTICLE 15.

MISSISSIPPI TELEPHONE SOLICITATION ACT.

Sec.

77-3-705. Definitions.
77-3-707. Use of the "no-calls" database by telephone solicitors mandatory.
77-3-711. Exempt categories.
77-3-721. Fees; funding of expenses of agency; deposit of user charges and fees authorized under this section into State General Fund [Repealed effective July 1, 2024].
77-3-725. Violations; hearings; penalties.
77-3-737. Repealed.

§ 77-3-701. Short title

Cross References— A violation of the Caller ID Anti-spoofing Act (§ 77-3-801 et seq.) is a violation of this article, see § 77-3-809.

§ 77-3-705. Definitions.

For the purposes of this article, the following words and terms shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Consumer" means a person or business that receives a telephone call or text message from a telephone solicitor.

(b) "Caller identification service" means a type of telephone service which permits a telephone subscriber to view the telephone number and name of the person or entity making an incoming telephone call or text message.

(c) "Telephone solicitor" means any person, firm, entity, organization, partnership, association, corporation, charitable entity, or a subsidiary or affiliate thereof, who engages in any type of telephone solicitation on his or her own behalf or through representatives, independent contractors, salespersons, agents, automated dialing systems, text messaging systems, or any other machines or other individuals or systems.

(d) "Telephone solicitation" means any voice or text message communication over the telephone line or cellular network of a consumer for the purpose of:

(i) Encouraging the purchase or rental of, or investment in, property;

(ii) Soliciting a sale of any consumer goods or services, or an extension of credit for consumer goods or services;

(iii) Soliciting any other item of value, pecuniary or otherwise, regardless of whether a sales presentation is made; or

(iv) Soliciting a charitable contribution of money or property.

(e) "Commission" means the Mississippi Public Service Commission.

(f) "Doing business in this state" refers to businesses which conduct telephone solicitations from any location to consumers located in this state.

(g) "Consumer goods or services" means any real property or any tangible or intangible personal property which is normally used for personal, family or household purposes, including, without limitation, any property intended to be attached to, or installed in, any real property, and any services related to the property.

(h) "Established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a consumer, with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the consumer, which relationship is currently existing or was terminated within six (6) months of the telephone solicitation; however, the act of purchasing consumer goods or services under an extension of credit does not create an existing business relationship between the consumer and the entity extending credit to the consumer for such purchase. The term does not include the situation wherein the consumer has merely been subject to a telephone solicitation by or at the behest of the telephone solicitor within the six (6) months immediately preceding the contemplated telephone solicitation.

(i) "Charitable organization" means any person or entity holding itself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental or conservation, civic or other eleemosynary purpose or for the benefit of law enforcement personnel, firefighters, or any other persons who protect the public safety, or for any other purpose where a charitable appeal is the basis of the solicitation.

(j) "Sales presentation" means attempting to obtain something of value, pecuniary or otherwise, regardless of whether consideration is or is expected to be exchanged.

HISTORY: Laws, 2003, ch. 478, § 3; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 3; reenacted without change, Laws, 2006, ch. 367, § 3; reenacted without change, Laws, 2010, ch. 324, § 3; reenacted without change, Laws, 2013, ch. 322, § 3; Laws, 2016, ch. 322, § 2; reenacted without change, Laws, 2017, ch. 312, § 3, eff from and after July 1, 2017; Laws, 2019, ch. 471, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote (a), which read: "'Consumer' means an actual or prospective purchaser, lessee or recipient of consumer goods or services"; in (d), inserted "or text message" and "or cellular network" in the introductory paragraph, and added (iii) and (iv) and made related changes; and added (j).

§ 77-3-707. Use of the "no-calls" database by telephone solicitors mandatory.

(1) Except as otherwise provided pursuant to Section 77-3-709 or 77-3-711, a telephone solicitor may not make or cause to be made any telephone

solicitation to any consumer in this state unless the telephone solicitor has purchased the "no-calls" database from the commission or the entity under contract with the commission.

(2) Except as otherwise provided pursuant to Section 77-3-709 or 77-3-711, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state who has given notice to the commission, or the entity under contract with the commission, of his or her objection to receiving telephone solicitations.

(3) The commission, or an entity under contract with the commission, shall establish and operate a "no-calls" database composed of a list of telephone numbers of consumers who have given notice of their objection to receiving telephone solicitations. The "no-calls" database may be operated by the commission or by another entity under contract with the commission.

(4) Each local exchange company and each competing local exchange carrier shall provide written notification on a semiannual basis to each of its consumers of the opportunity to provide notification to the commission, or the entity under contract with the commission, that the consumer objects to receiving telephone solicitations. The notification must be disseminated at the option of the carrier, by television, radio or newspaper advertisements, written correspondence, bill inserts or messages, a publication in the consumer information pages of the local telephone directory, or any other method not expressly prohibited by the commission.

(5) A telephone solicitor may not violate the Caller ID Anti-Spoofing Act in Section 77-3-801 et seq., and if in violation of such act, he shall also be in violation of this article. In addition to any remedies or penalties otherwise provided by law, such telephone solicitor shall be subject to any remedies or penalties available for a violation of this article.

HISTORY: Laws, 2003, ch. 478, § 4; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 4; reenacted without change, Laws, 2006, ch. 367, § 4; reenacted without change, Laws, 2010, ch. 324, § 4; reenacted without change, Laws, 2013, ch. 322, § 4; reenacted without change, Laws, 2017, ch. 312, § 4, eff from and after July 1, 2017; Laws, 2019, ch. 487, § 3, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added (5).

§ 77-3-711. Exempt categories.

The provisions of this article shall not apply to:

(a) A person soliciting:

(i) Who does not make the major sales presentation during the telephone solicitation;

(ii) Without the intent to complete or obtain provisional acceptance of a sale, a charitable contribution, or the payment of some other item of value, pecuniary or otherwise, during the telephone solicitation; or

(iii) Without the intent to complete, and who does not complete, the sales presentation during the telephone solicitation, but who completes

the sales presentation at a later face-to-face meeting between the person soliciting and the prospective purchaser or consumer.

(b) A person who is a licensee under Chapter 35, Title 73, Mississippi Code of 1972, who is a resident of the State of Mississippi, and whose telephone solicitation is for the sole purpose of selling, exchanging, purchasing, renting, listing for sale or rent or leasing real estate in connection with his real estate license and not in conjunction with any other offer.

(c) A motor vehicle dealer as that term is defined in Section 63-17-55, who is a resident of the State of Mississippi and who maintains a current motor vehicle dealer's license issued by the Mississippi Motor Vehicle Commission, whose telephone solicitation is for the sole purpose of selling, offering to sell, soliciting or advertising the sale of motor vehicles in connection with his motor vehicle dealer's license and not in conjunction with any other offer.

(d) An agent as that term is defined in Section 83-17-1 whose telephone solicitation is for the sole purpose of soliciting, consulting, advising, or adjusting in the business of insurance.

(e) A broker-dealer, agent, or investment advisor registered under Chapter 71, Title 75, Mississippi Code of 1972, whose telephone solicitation is for the sole purpose of effecting or attempting to effect the purchase or sale of securities or has the purpose of providing or seeking to provide investment or financial advice.

(f) A person calling on behalf of a charitable organization which is registered under Chapter 11, Title 79, Mississippi Code of 1972, whose telephone solicitation is for the sole purpose of soliciting for the charitable organization and who receives no compensation for his activities on behalf of the organization.

(g) A person calling on behalf of a newspaper of general circulation, whose telephone solicitation is for the sole purpose of soliciting a subscription to the newspaper from, or soliciting the purchase of advertising by, the consumer.

(h) A person calling on behalf of any supervised financial institution or parent, subsidiary or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, small loan company, consumer finance lender, commercial finance lender or insurer, provided that the institution has a physical office located in the State of Mississippi and is subject to supervision by an official or agency of the State of Mississippi or of the United States.

(i) A person calling on behalf of a funeral establishment licensed under Section 73-11-41, cemetery or monument dealer, if the sole purpose of the telephone solicitation relates to services provided by the funeral or death related establishments in the course of its ordinary business.

(j) Any telephone solicitor who solicits a consumer with whom he has an established business relationship.

HISTORY: Laws, 2003, ch. 478, § 6; reenacted and amended, Laws, 2005, 2nd

Ex Sess, ch. 62, § 6; reenacted without change, Laws, 2006, ch. 367, § 6; reenacted without change, Laws, 2010, ch. 324, § 6; reenacted without change, Laws, 2013, ch. 322, § 6; reenacted without change, Laws, 2017, ch. 312, § 6, eff from and after July 1, 2017; Laws, 2019, ch. 471, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment inserted "a charitable contribution, or the payment of some other item of value, pecuniary or otherwise" in (a)(ii).

§ 77-3-721. Fees; funding of expenses of agency; deposit of user charges and fees authorized under this section into State General Fund [Repealed effective July 1, 2024]

All fees collected under the provisions of this article shall be deposited into a special fund which is created in the State Treasury to be expended by the commission for the implementation and administration of this article. From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund, and all user charges and fees authorized under this article shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

This section shall stand repealed on July 1, 2024.

HISTORY: Laws, 2003, ch. 478, § 11; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 11; reenacted without change, Laws, 2006, ch. 367, § 11; reenacted without change, Laws, 2010, ch. 324, § 11; reenacted without change, Laws, 2013, ch. 322, § 11; reenacted without change, Laws, 2017, ch. 312, § 11; Laws, 2017, 1st Ex Sess, ch. 7, § 39, eff from and after passage (approved June 23, 2017); Laws, 2020, ch. 455, § 1, eff from and after July 1, 2020; Laws, 2021, ch. 332, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2020 amendment extended the date of the repealer for the section by substituting "July 1, 2021" for "July 1, 2020" in the last paragraph.

The 2021 amendment, in the first paragraph, substituted "article" for "section," and made a minor punctuation change; and in the second paragraph, inserted "on," and extended the date of the repealer for the section by substituting "July 1, 2024" for "July 1, 2021."

§ 77-3-725. Violations; hearings; penalties.

The commission may investigate alleged violations and initiate proceedings relative to a violation of this article or any rules and regulations promulgated pursuant to this article. Such proceedings include, without limitation, proceedings to issue a cease and desist order, and to issue an order imposing a civil penalty not to exceed Ten Thousand Dollars ($10,000.00) for each violation. The commission shall afford an opportunity for a fair hearing to the alleged violator(s) after giving written notice of the time and place for said hearing. Failure to appear at any such hearing may result in the commission finding the alleged violator(s) liable by default. Any telephone solicitor found to have violated this article, pursuant to a hearing or by default, may be subject to a civil penalty not to exceed Ten Thousand Dollars ($10,000.00) for each

violation to be assessed and collected by the commission. Each telephonic communication shall constitute a separate violation.

All penalties collected by the commission shall be deposited in the special fund created under Section 77-3-721 for the administration of this article.

The commission may issue subpoenas, require the production of relevant documents, administer oaths, conduct hearings, and do all things necessary in the course of investigating, determining and adjudicating an alleged violation.

The remedies, duties, prohibitions and penalties set forth under this article shall not be exclusive and shall be in addition to all other causes of action, remedies and penalties provided by law, including, but not limited to, the penalties provided by Section 77-1-53.

HISTORY: Laws, 2003, ch. 478, § 13; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 13; reenacted without change, Laws, 2006, ch. 367, § 13; reenacted without change, Laws, 2010, ch. 324, § 13; reenacted without change, Laws, 2013, ch. 322, § 13; reenacted without change, Laws, 2017, ch. 312, § 13, eff from and after July 1, 2017; Laws, 2019, ch. 471, § 3, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "Ten Thousand Dollars ($10,000.00)" for "Five Thousand Dollars ($5,000.00)" twice in the first paragraph.

§ 77-3-737. Repealed.

Repealed by Laws, 2019, ch. 471, § 4, eff from and after July 1, 2019.

§ 77-3-737. [Laws, 2003, ch. 478, § 19; Laws, 2005, 2nd Ex Sess, ch. 62, § 19; reenacted without change, Laws, 2006, ch. 367, § 19; Laws, 2010, ch. 324, § 19; Laws, 2013, ch. 322, § 19; reenacted and amended, Laws, 2017, ch. 312, § 19, eff from and after July 1, 2017.]

Editor's Notes — Former § 77-3-737 repealed §§ 77-3-701 through 77-3-737, effective July 1, 2021.

ARTICLE 17.

CALLER ID ANTI-SPOOFING ACT.

Sec.

77-3-803. Definitions.
77-3-805. Causing caller identification service to transmit misleading or inaccurate caller identification information to subscriber prohibited.
77-3-809. Penalties.

§ 77-3-801. Short title.

Cross References— A violation of the Mississippi Telephone Solicitation Act (§ 77-3-701 et seq.) is a violation of this article, see § 77-3-707.

§ 77-3-803. Definitions.

As used in this article:

(a) "Automatic number identification" means a system that identifies the billing account for a call and includes an enhanced 911 service capability that enables the automatic display of the ten-digit number used to place a 911 call from a wire line, wireless, interconnected VoIP or nontraditional telephone service.

(b) "Caller identification information" means information provided by a caller identification service regarding the telephone number, or other origination information, of a call or facsimile transmission made using a telecommunications service or an interconnected VoIP service, or of a text message sent using a text-messaging service.

(c) "Caller identification service" means any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or interconnected VoIP service. The term includes automatic number identification services.

(d) "Interconnected VoIP service" means an interconnected Voice over Internet Protocol service that:

(i) Enables real-time, two-way voice communications;

(ii) Requires a broadband internet connection from the user's location;

(iii) Requires internet protocol-compatible customer premises equipment; and

(iv) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(e) "Place of primary use" means the street address where a subscriber's use of a telecommunications service or interconnected VoIP service primarily occurs, which shall be:

(i) The residential street address or the primary business street address of the subscriber or, in the case of a subscriber of interconnected VoIP service, the subscriber's registered location; and

(ii) Within the licensed service area of the provider.

(f) "Provider" means a person or entity that offers telecommunications service or interconnected VoIP service.

(g) "Registered location" means the most recent information obtained by an interconnected VoIP service provider that identifies the physical location of an end user.

(h) "Subscriber" means a person:

(i) Who subscribes to a caller identification service in connection with a telecommunications service or an interconnected VoIP service; and

(ii) Whose place of primary use for the service described in paragraph (h)(i) is located in Mississippi.

(i) "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to classes of users so as to be effectively available directly to the public, regardless of the facilities used.

HISTORY: Laws, 2010, ch. 326, § 2, eff from and after July 1, 2010; Laws, 2019, ch. 487, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote the section to delete definitions for "call," "caller," "enter," "false information," and "telephone caller identification system" and add definitions for "automatic number identification," "caller identification information," "caller identification service," "interconnected VoIP service," "place of primary use," "provider," "registered location," "subscriber," and "telecommunications service."

§ 77-3-805. Causing caller identification service to transmit misleading or inaccurate caller identification information to subscriber prohibited.

Except as provided in Section 77-3-807, a person shall not, in connection with any telecommunications service or interconnected VOIP service, knowingly and with the intent to defraud or cause harm to another person or to wrongfully obtain anything of value, cause any caller identification service to transmit misleading or inaccurate caller identification information to a subscriber.

HISTORY: Laws, 2010, ch. 326, § 3, eff from and after July 1, 2010; Laws, 2019, ch. 487, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote the section, which read: "(1) A person may not enter or cause to be entered false information into a telephone caller identification system with the intent to deceive, defraud or mislead the recipient of a call. (2) A person may not place a call knowing that false information was entered into the telephone caller identification system with the intent to deceive, defraud or mislead the recipient of the call."

§ 77-3-809. Penalties.

(1) Any person who violates this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than One Thousand Dollars ($1,000.00) or shall be imprisoned in the county jail not exceeding one (1) year, or both.

(2) Any violation of this article constitutes an unlawful trade practice under Section 75-24-5 and, in addition to any remedies or penalties set forth in this article, shall be subject to any remedies or penalties available for a violation of that statute.

(3) Any violation of this article constitutes a violation of the Mississippi Telephone Solicitation Act, Section 77-3-701 et seq., and in addition to any remedies or penalties provided in this article, shall be subject to any remedies or penalties available for a violation of that act.

HISTORY: Laws, 2010, ch. 326, § 5, eff from and after July 1, 2010; Laws, 2019, ch. 487, § 4, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added (3).

CHAPTER 5.

ELECTRIC POWER

Article 5. Electric Power Associations. 77-5-201
Article 19. Mississippi Electric Cooperatives Broadband COVID-19 Act. 77-5-901

ARTICLE 5.

ELECTRIC POWER ASSOCIATIONS.

Sec.
77-5-205. Formation of non-profit corporations authorized.
77-5-231. Specific powers of corporation.

§ 77-5-205. Formation of non-profit corporations authorized.

Three (3) or more natural persons may, by executing, filing and recording a certificate as hereafter provided in this article, form a corporation not organized for pecuniary profit for the purpose of promoting and encouraging the fullest possible use of electric energy by making electric energy available at the lowest cost consistent with sound economy and prudent management of the business of such corporations. In addition, such corporations may serve the purposes provided under the Mississippi Broadband Enabling Act.

HISTORY: Codes, 1942, § 5464; Laws, 1936, ch. 184; Laws, 2019, ch. 301, § 9, eff from and after passage (approved January 30, 2019).

Amendment Notes — The 2019 amendment, effective January 30, 2019, added the last sentence.

Cross References — Mississippi Broadband Enabling Act, see § 77-17-1 et seq.

§ 77-5-223. Powers of board of directors.

JUDICIAL DECISIONS

2. Power to amend bylaws.

Chancery court properly granted an electric power association's motion to compel arbitration in the members' action for failure to return excess revenues and receipts because the parties entered into a valid arbitration agreement, the association's board of directors was statutorily authorized to adopt and amend the bylaws, the members agreed to be bound by the bylaws and knew that they could be amended, their dispute fell within the scope of the agreement, and no external factors precluded arbitration, and there was no evidence that the arbitration provision was a contract of adhesion or was procedurally unconscionable. Virgil v. Sw. Miss. Elec. Power Ass'n, 296 So. 3d 53, 2020 Miss. LEXIS 87 (Miss. 2020).

§ 77-5-231. Specific powers of corporation.

(1) A corporation shall have power to do any and all acts or things

necessary or convenient for carrying out the purposes for which it was formed, including, but not limited to:

(a) To sue and be sued.

(b) To have a seal and alter the same at pleasure.

(c) To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay therefor in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

(d) To render service and to acquire, own, operate, maintain and improve a system or systems within the state and in counties adjacent thereto.

(e) To pledge all or any part of its revenues and to mortgage or otherwise incumber all or any part of its property for the purpose of securing the payment of the principal of and interest on any of its bonds or other obligations.

(f) To use any right-of-way, easement or other similar property right necessary or convenient in connection with the acquisition, improvement, operation or maintenance of a system, granted by the state or any political subdivision thereof, provided that the governing body of such political subdivision shall consent to such use, and to have and exercise the power of eminent domain in the manner provided by the condemnation laws of this state for acquiring private property for public use, such right to be paramount except as to the property of the state or of any political subdivision thereof.

(g) To accept gifts or grants of money, property, real or personal, from any person, municipality or federal agency and to accept voluntary and uncompensated services.

(h) To make any and all contracts necessary or convenient for the full exercise of the powers in this article granted, including, but not limited to, contracts with any person, federal agency, state agency or municipality for the purchase, transfer or sale of energy and/or the acquisition of all or any part of any system, and in connection with any such contract to stipulate and agree to such covenants, terms and conditions as the board may deem appropriate, including covenants, terms and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices and the manner of disposing of the revenues of the system operated and maintained by the corporation.

(i) To sell, lease, or otherwise dispose of all or any part of its property, subject however to the provisions of Section 77-5-237.

(j) To contract debts, borrow money and to issue, assume or indorse the payment of bonds or other evidences of indebtedness.

(k) To fix, maintain and collect fees, rents, tolls and other charges for services rendered.

(*l*) To acquire and to sell, lease, distribute and generally to deal in electrical and plumbing appliances, apparatus, machinery and equipment

for the purpose of and in connection with the promotion of the sale of electric energy to its customers; to assist its customers to purchase or otherwise obtain such appliances, apparatus, machinery and equipment; to assist its customers to wire their premises and to install therein such appliances, apparatus, machinery and equipment; to acquire and to indorse, sell, pledge, hypothecate and dispose of notes, bonds and other obligations of its customers in carrying out the purposes expressed in this paragraph.

(m) To maintain, in any reasonable manner and in its discretion, its easements and rights-of-way and adjacent property within a reasonable or necessary distance of its energy facilities free of vegetation, trees, limbs or other impediments in order to foster the integrity and reliability of the corporation's electric energy system or the safety of the public or its members, agents or employees.

(n) To condemn any land, easements, or rights-of-way, either on, under, or above the ground, as the association may deem necessary for any purposes mentioned in this article other than the purposes described in subsection (2) of this section, and such property or interest in such property may be so acquired whether or not the same is owned or held for public use by corporations, associations or persons having the power of eminent domain, or otherwise held or used for public purposes. Such power of condemnation may be exercised in the mode or method of procedure prescribed by Chapter 27, Title 11, Mississippi Code of 1972, or in the mode or method of procedure prescribed by any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain. Where condemnation proceedings become necessary, the judge of the circuit court or the judge of the county court in counties where the county court exists, in which such proceedings are filed, shall, upon application of the authority, and upon the deposit in court, to the use of the person or persons lawfully entitled thereto, of such amount as the judge may deem necessary to assure just compensation, order that the right of possession shall issue immediately or as soon and upon such terms as the judge, in his discretion, may deem just and proper. Upon application of the parties in interest other than the corporation, the judge may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceedings.

(o) To operate across state lines.

(p) To perform any and all of the foregoing acts and to do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person, federal agency or municipality.

(q) To perform as provided under the Mississippi Broadband Enabling Act.

(2) Any generation and transmission electric corporation created under this article may undertake economic development activities, whether directly, indirectly, or in conjunction with other entities, including activities such as providing capital, or investment in or acquisition and development of business

or industrial sites and the necessary infrastructure or services needed to attract new or existing businesses or industry, to create or maintain employment opportunities, or otherwise to positively impact its service territory or in some manner promote the sale of electric energy.

HISTORY: Codes, 1942, § 5474; Laws, 1936, ch. 184; Laws, 1938, chs. 251, 252; Laws, 2013, ch. 466, § 2; Laws, 2015, ch. 360, § 1; Laws, 2016, ch. 387, § 12, eff from and after July 1, 2016; Laws, 2019, ch. 301, § 10, eff from and after passage (approved January 30, 2019).

Amendment Notes — The 2019 amendment, effective January 30, 2019, added (1)(q).

Cross References — Mississippi Broadband Enabling Act, see § 77-17-1 et seq.

ARTICLE 15.

JOINT MUNICIPAL ELECTRIC POWER.

§ 77-5-725. Rights and powers of joint agencies.

OPINIONS OF THE ATTORNEY GENERAL

The Municipal Energy Agency of Mississippi is not vested with specific authority to reimburse employees for educational costs and fees, but since it is vested with the power to employ such employees as may be required and to fix their compensation, it may include provisions for the reimbursement of education costs and fees as part of an employee's future compensation. Davis, March 27, 1998, A.G. Op. #98-0050.

ARTICLE 19.

MISSISSIPPI ELECTRIC COOPERATIVES BROADBAND COVID-19 ACT.

Sec.

77-5-901. Short Title.
77-5-903. Legislative findings and declarations; Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund created; Covid-19 Broadband Provider Grant Program Fund created; definitions; transfer of unobligated monies to Unemployment Compensation Fund.
77-5-905. Purpose of projects applied for by electric cooperatives or broadband providers; identification of unserved or underserved census blocks; electric cooperative's projects to be considered pilot or special purpose projects; applicants receiving grant monies to provide matching dollar for dollar nongrant monies toward projects.
77-5-907. Public Utilities Application Fund created; source of funds; unexpended monies; use of monies.
77-5-909. Application for grant programs; application fee; review of primary application; distribution of approved grants; criteria for determination of multiple projects including common census blocks; amended applications; ranking of primary applications for overdrawn grant funds; secondary and tertiary applications.

Sec.
77-5-911. Monthly project status reports; requisite information; filing notice of project completion; field or onsite audits, engineering reviews, or requests for additional information to ensure compliance with article; financial information confidential and proprietary; written notice of compliance with article; noncompliant applicants.

§ 77-5-901. Short Title.

This article shall be known and may be cited as the "Mississippi Electric Cooperatives Broadband COVID-19 Act."

HISTORY: Laws, 2020, ch. 487, § 2, eff from and after passage (became law without the Governor's signature on July 9, 2020); Laws, 2020, 495, § 1, eff from and after passage (became law without the Governor's signature on September 1, 2020).

Editor's Note — Laws of 2020, ch. 487, § 1, effective July 9, 2020, and Laws of 2020, ch. 495, § 1, effective September 1, 2020, provide:

"SECTION 1. (1) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund out of the Budget Contingency Fund.....$ 65,000,000.00.

"(2) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Covid-19 Broadband Provider Grant Program Fund out of the Budget Contingency Fund..... $ 10,000,000.00."

Laws of 2020, ch. 487, § 7, effective July 9, 2020, renumbered § 8 by Laws of 2020, ch. 495, § 1, effective September 1, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Amendment Note — The 2020 amendment, effective September 1, 2020, made no changes to the section as it was added by Section 2 of Chapter 487, Laws of 2020.

§ 77-5-903. Legislative findings and declarations; Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund created; Covid-19 Broadband Provider Grant Program Fund created; definitions; transfer of unobligated monies to Unemployment Compensation Fund.

(1) The Legislature finds and declares that the State of Emergency and ongoing public health crisis related to COVID-19 has caused significant challenges in the immediate delivery of educational, health care and other services. The Legislature further finds and declares that due to the COVID-19 pandemic there is an immediate increased need for reliable internet service in rural Mississippi, including expanded rural broadband capacity to facilitate and assist with distance learning, telemedicine, and telework, which is required for citizens to continue their education, receive necessary services, and work in a healthy and safe environment.

(2) Therefore, as part of this state's response to the COVID-19 public health emergency, the Legislature determines that it is necessary to create and there is hereby created in the State Treasury a special fund to be designated as the "Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund," which shall consist of funds made available by the Legislature in any manner and funds from any other source designated for deposit into such fund. The Department of Finance and Administration, in conjunction with the Mississippi Public Utilities Staff, shall establish the "Mississippi Electric Cooperatives Broadband COVID-19 Grant Program" ("Cooperative Program") to provide grants to electric cooperatives for the purpose of expanding immediately broadband access in unserved and underserved areas of the State of Mississippi, as determined by the Mississippi Public Utilities Staff which the Legislature hereby finds and determines are necessary expenditures due to the public health emergency with respect to COVID-19.

(3) The Legislature further determines, as part of this state's response to the COVID-19 public health emergency, that it is necessary to create and there is hereby created in the State Treasury a special fund to be designated as the "COVID-19 Broadband Provider Grant Program Fund," which shall consist of funds made available by the Legislature in any manner and funds from any other source designated for deposit into such fund; and the Department of Finance and Administration, in conjunction with the Mississippi Public Utilities Staff, shall establish the "COVID-19 Broadband Grant Program" ("General Program") to provide grants to broadband providers, as defined in subsection (4) of this section, for the purpose of expanding broadband access in unserved and underserved areas of the State of Mississippi, as determined by the Mississippi Public Utilities Staff, which the Legislature hereby finds and determines are necessary expenditures due to the public health emergency with respect to COVID-19.

(4) As used in this article, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Applicant" means an electric cooperative or broadband provider that makes an application for a grant under this article.

(b) "Broadband affiliate" means any entity that is (i) wholly or partially owned by an electric cooperative, and (ii) formed to own or operate a broadband system or provide broadband services.

(c) "Broadband provider" means an entity that (i) is not an electric cooperative or an affiliate of an electric cooperative and (ii) is authorized to provide broadband services in Mississippi.

(d) "Broadband services" means any service that consists of or includes the provision of or connectivity to a high-speed, high-capacity transmission medium that can carry signals from or to multiple sources at a rate not less than one hundred (100) megabits per second in the downstream direction and not less than one hundred (100) megabits per second in the upstream direction, and that either: (i) is used to provide access to the internet, or (ii) provides computer processing, information storage, information content or

protocol conversion, including any service applications or information service provided over such high-speed access service.

(e) "Census block" means a geographic area defined as a census block by the United States Department of Commerce, Bureau of the Census, in conducting the 2010 decennial census.

(f) "COVID-19" means the Coronavirus Disease 2019;

(g) "Department" means the Department of Finance and Administration; and

(h) "Electric cooperative" means a corporation formed or operating under Section 77-5-201 et seq.

(i) "Grant Funds" means the "Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund" and the "COVID-19 Broadband Provider Grant Program Fund."

(j) "Grant Programs" means the "Mississippi Electric Cooperatives Broadband COVID-19 Grant Program" and the "COVID-19 Broadband Provider Grant Program."

(k) "Primary application" means the initial application filed by an applicant under this article for the purpose of obtaining a grant from one (1) of the grant funds.

(*l*) "Public Utilities Staff" or "staff" means the Mississippi Public Utilities Staff.

(m) "Public Utilities Staff Regulation Fund" means the fund established under Section 77-2-19.

(n) "Secondary application" means an application filed by an applicant under this article after its primary application has been filed and that is submitted for the purpose of obtaining an additional grant from one (1) of the grant funds. Approved grants for secondary applications will be distributed from each grant fund on a pro rata basis, as determined by the department.

(o) "Tertiary application" means an application filed by an electric cooperative after its secondary application has been filed and that is submitted for the purposes of obtaining an additional grant from the Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund.

(5) Unexpended amounts remaining in either of the grant funds at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the grant funds shall be deposited to the credit of the grant funds, respectively. Monies in the grant funds shall be used for the purpose of providing payments to eligible applicants as provided in this article. Monies in the grant funds shall be administered and disbursed by the department and Staff in compliance with this article and in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established in Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. If on October 1, 2020, there are unobligated monies in one or both of the grant funds, or if at any other time undistributed monies in

either grant funds are determined by the department to be ineligible to be spent by the department, those monies shall be transferred into the Unemployment Compensation Fund.

HISTORY: Laws, 2020, ch. 487, § 3, eff from and after passage (became law without the Governor's signature on July 9, 2020); Laws, 2020, 495, § 1, eff from and after passage (became law without the Governor's signature on September 1, 2020).

Joint Legislative Committee Note — Section 3 of Chapter 487, Laws of 2020, effective from and after passage (became law without the Governor's signature on July 9, 2020), added this section. Section 1 of Chapter 495, Laws of 2020, effective from and after passage (became law without the Governor's signature on September 1, 2020), amended this section. As set out above, this section reflects the language of Section 1 of Chapter 495, Laws of 2020, which contains language that provides that it supersedes § 77-5-903 as added by Chapter 487.

Editor's Note — Laws of 2020, ch. 487, § 7, effective July 9, 2020, renumbered § 8 by Laws of 2020, ch. 495, § 1, effective September 1, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Amendment Note — The 2020 amendment, effective September 1, 2020, in (1), substituted "telework, which" for "telework and which" in the last sentence; and in (4), inserted "(1)" in (k) and (n), added (o), and made minor punctuation changes.

§ 77-5-905. Purpose of projects applied for by electric cooperatives or broadband providers; identification of unserved or underserved census blocks; electric cooperative's projects to be considered pilot or special purpose projects; applicants receiving grant monies to provide matching dollar for dollar nongrant monies toward projects.

(1) From the date of the beginning of the period for applications for grants under this section, the Staff shall consider and review applications from any eligible applicant. Any project applied for by an electric cooperative must be for the purpose of the electric cooperative immediately installing broadband fiber on its electric delivery system and thereby facilitating the provision of broadband services by its broadband affiliate or an unaffiliated broadband provider. Any project applied for by a broadband provider must be for the purpose of the broadband provider's delivery of broadband services. All projects under each of the Grant Programs must be designed to immediately provide increased broadband services to an area or areas that have been determined by the Public Utilities Staff to be unserved or underserved according to the latest publicly available Federal Communications Commission broadband data. Under this article, electric cooperatives may only apply for and receive grants under the Cooperative Program, and broadband providers may only apply for and receive grants under the General Program.

(2) As to each of those specific Mississippi counties for which such information is requested by an electric cooperative or broadband provider, the Public Utilities Staff shall, by no later than July 10, 2020, specifically identify census blocks that are unserved or underserved according to the latest publicly available Federal Communications Commission broadband data. In order to create efficiencies in the administration of the Grant Programs and avoid the imposition of undue and unnecessary burdens on the Staff, a single electric cooperative or broadband provider may not request such information for more than three (3) counties and any requests for such information must be submitted to the Staff by no later than the close of business on July 7, 2020. The Staff shall provide its identification of such census blocks directly to the department and to each electric cooperative and broadband provider requesting the Staff for such information, and also provide such information to the public through a posting on the Public Utilities Staff's website. Each applicant shall rely on the Public Utilities Staff's identification of unserved and underserved census blocks in making its application(s) for grant funds and spending awarded grant funds.

(3) In an attempt to facilitate broader participation in the Cooperative Program, an electric cooperative's project or projects, for which grant monies are provided under this article, shall be considered pilot or special purpose projects and shall not obligate the electric cooperative receiving the grant monies or such electric cooperative's broadband affiliate to provide broadband access to the entire service area of the electric cooperative.

(4) For each dollar of grant monies requested for a project or projects by an applicant, the applicant must commit and spend a dollar of nongrant monies toward such project or projects. Universal Service Fund, Connect America Fund, or other grants awarded for broadband expansion through a separate state or federal program shall not be used for the required matching funds, but this limitation shall not include or extend to any loans of any kind. The primary application made by an applicant shall be for a grant totaling not more than Six Million Dollars ($6,000,000.00).

(5) An applicant submitting a primary application may also submit a secondary application at the same time or soon thereafter with no maximum to the amount of grant monies that may be requested. The department shall first obligate all primary applications made that meet the eligibility criteria and are approved by the Staff. Then, if grant monies are still available the department shall consider and obligate any secondary applications that meet the eligibility criteria and are approved by the Staff. During the secondary application process, if one (1) of the grant funds has unobligated monies remaining after all qualifying secondary applications are considered, then the State Fiscal Officer shall transfer those unobligated monies into the other grant fund for distribution in the secondary application process of such other grant fund.

(6) From and after September 1, 2020, an electric cooperative may submit a tertiary application for the Mississippi Electric Cooperatives Broadband COVID-19 Grant Program with no maximum amount of grant monies that may be requested. During the tertiary application process, if one (1) of the

grant funds has unobligated monies remaining after all qualifying applications have been considered, then the State Fiscal Officer shall transfer those unobligated monies into the other grant fund for distribution in the tertiary application process.

(7) Any grant monies provided under this article shall be spent no later than December 30, 2020, or by such later date as may be specified in the guidelines, guidance, rules, regulations and/or other criteria of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established in Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

HISTORY: Laws, 2020, ch. 487, § 4, eff from and after passage (became law without the Governor's signature on July 9, 2020); Laws, 2020, 495, § 1, eff from and after passage (became law without the Governor's signature on September 1, 2020).

Joint Legislative Committee Note — Section 4 of Chapter 487, Laws of 2020, effective from and after passage (became law without the Governor's signature on July 9, 2020), added this section. Section 1 of Chapter 495, Laws of 2020, effective from and after passage (became law without the Governor's signature on September 1, 2020), amended this section. As set out above, this section reflects the language of Section 1 of Chapter 495, Laws of 2020, which contains language that provides that it supersedes § 77-5-905 as added by Chapter 487.

Editor's Note — Laws of 2020, ch. 487, § 7, effective July 9, 2020, renumbered § 8 by Laws of 2020, ch. 495, § 1, effective September 1, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Amendment Note — The 2020 amendment, effective September 1, 2020, added (6); redesignated former (6) as (7); and made a minor punctuation change.

Federal Aspects — Coronavirus Aid, Relief, and Economic Security Act (CARES Act), see 116 P.L. 136, 134 Stat. 281.

§ 77-5-907. Public Utilities Application Fund created; source of funds; unexpended monies; use of monies.

There is hereby created in the State Treasury a special fund to be designated as the "Public Utilities Application Fund," which shall consist of funds made available by the Legislature in any manner and funds from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be used for administration expenses related to the processing of grants by the Public Utilities Staff. Any application fee collected under the grant programs and deposited to the Public Utilities Staff Regulation Fund before September 1, 2020, shall be transferred to the Public Utilities Application Fund.

HISTORY: Laws, 2020, 495, § 1, eff from and after passage (became law without the Governor's signature on September 1, 2020).

Editor's Note — Laws of 2020, ch. 487, § 7, effective July 9, 2020, renumbered § 8 by Laws of 2020, ch. 495, § 1, effective September 1, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

§ 77-5-909. Application for grant programs; application fee; review of primary application; distribution of approved grants; criteria for determination of multiple projects including common census blocks; amended applications; ranking of primary applications for overdrawn grant funds; secondary and tertiary applications.

(1) An applicant desiring to participate in one (1) of the grant programs shall make written application to the Staff for a grant.

(2) Any primary application must be submitted on or before the close of business on July 17, 2020. A primary application must include the following: (a) a description of the applicant, (b) a description of the proposed project, (c) a project map depicting the projects unserved or underserved census blocks, as identified by the Public Utilities Staff, (d) an engineering map of the project, (e) an estimate of the total number of households along the route of the project, (f) the total estimated miles of fiber to be installed, (g) the proposed maximum speeds to be delivered both downstream and upstream, (h) the total estimated cost of the project, (i) the grant amount requested by the electric cooperative, subject, however, to the limit set forth in Section 77-5-903, and (j) confirmation by the applicant of its obligation under this article to refund any awarded funds in the event it is found by the Public Utilities Staff to be fully or materially noncompliant with this article.

(3) In order to assist with the payment of reasonable expenses the Public Utilities Staff will incur in the administration of the Grant Programs, any application for a grant under this article, whether primary, secondary or tertiary, must include an application fee that is: (a) made payable to the Public Utilities Application Fund, and (b) equal to one-half of one percent (1/2 of 1%) of the grant amount requested in the application. An application fee paid by an applicant shall be immediately returned if the proposed project is rejected by the Staff. In the event a requested grant is partially awarded, the application fee shall be reduced on a proportionate basis and the difference refunded to the applicant.

(4) The Staff shall expeditiously review the primary application submitted by an applicant and determine if the application and proposed project meet the criteria set forth in this article. On July 28, 2020, by close of business, the Staff shall notify the applicant and the department which primary applications have been approved. The department shall then distribute the approved grants to the approved applicant(s) by close of business July 31, 2020.

(5) In the event two (2) or more applicants submit projects that include one (1) or more common census blocks, the Staff shall determine which proposed project best serves that census block or blocks using the following criteria:

(a) Maximum speeds, including both downstream and upstream,

(b) Total miles of fiber to be deployed based on the entire application, and

(c) Total value of the project, including both grant and match, with preference given to projects of greater value.

The applicant whose project is rejected based on the Staff's determination may, within three (3) days after the Staff's determination, revise its proposed project and refile an amended application with the Staff. The refiled project shall continue as the same designation (primary, secondary or tertiary) as the rejected project.

(6) If after approval by the Staff of all primary applications, the department determines that the requested grants are greater than the monies in a given grant fund, the Staff shall determine a ranking of the primary applications for whichever grant fund is overdrawn. Such ranking shall be determined by the following criteria:

(a) Maximum speeds, including both downstream and upstream,

(b) Total miles of fiber to be deployed, and

(c) Total value of the project, including both grant and match, with preference given to projects of greater value.

After the Staff has determined primary application rankings, it shall transmit said rankings to the department for disbursement. The department shall disburse grant funds in order of the primary application rankings until all the grant funds are disbursed.

(7) Any secondary application by an applicant shall be submitted on or before July 29, 2020, and meet the same application content criteria as a primary application. The department shall notify the Staff if there are any grant funds remaining after the department's distributions of grant funds for primary applications. In the event there are monies remaining in a given grant fund, the Staff shall review the secondary applications for approval. Upon its approval of secondary applications, the Staff shall notify the department of such application approvals by no later than the close of business on August 11, 2020, and the department shall distribute monies on a pro rata basis, as determined by the department, to all qualifying secondary applicants on or before August 14, 2020.

(8) Any tertiary application for the Mississippi Electric Cooperatives Broadband COVID-19 Grant Program as authorized in Section 77-5-905 must be submitted on or before the close of business on September 4, 2020, and meet the same application content criteria as a primary application. Upon approval of any tertiary application, the Staff shall notify the department of such application approval by no later than the close of business on September 11, 2020, and the department shall distribute monies on a pro-rata basis to all qualifying applicants on or before September 18, 2020.

HISTORY: Laws, 2020, ch. 487, § 5, eff from and after passage (became law without the Governor's signature on July 9, 2020); Laws, 2020, 495, § 1, eff from and after passage (became law without the Governor's signature on September 1, 2020).

Joint Legislative Committee Note — Section 5 of Chapter 487, Laws of 2020, effective from and after passage (became law without the Governor's signature on July 9, 2020), added this section. Section 1 of Chapter 495, Laws of 2020, effective from and after passage (became law without the Governor's signature on September 1, 2020), amended this section. As set out above, this section reflects the language of Section 1 of Chapter 495, Laws of 2020, which contains language that provides that it supersedes § 77-5-909 as added by Chapter 487.

Editor's Note — Laws of 2020, ch. 487, § 7, effective July 9, 2020, renumbered § 8 by Laws of 2020, ch. 495, § 1, effective September 1, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Amendment Note — The 2020 amendment, effective September 1, 2020, in (1), inserted "(1)"; in (3), substituted "primary, secondary or tertiary" for "primary or secondary," and substituted "Public Utilities Application Fund" for "Public Utilities Staff Regulation Fund"; in the last paragraph of (5), substituted "(primary, secondary or tertiary)" for "(primary or secondary)"; and added (8).

§ 77-5-911. Monthly project status reports; requisite information; filing notice of project completion; field or onsite audits, engineering reviews, or requests for additional information to ensure compliance with article; financial information confidential and proprietary; written notice of compliance with article; noncompliant applicants.

(1) Each applicant receiving any grant funds under this article shall monthly file project status reports with the Public Utilities Staff. The initial project status report shall be due on or before September 15, 2020, and updates shall be provided on or before the fifteenth day of each month thereafter until such time as the project is completed. Such reports shall include the following information concerning the project: (a) a summary of the work performed, (b) an itemization of the expenditures on the project, (c) the number of miles of broadband fiber installed, (d) the number of residential properties along the route of the installed fiber, (e) the number of residential properties taking broadband service using the installed fiber, and (f) the estimated project completion percentage.

(2) Upon its completion of a project funded under this article, the applicant shall promptly file a notice of project completion with the Public Utilities Staff. The notice shall contain the same information as is required to be provided in a monthly status report.

(3) The Public Utilities Staff may, in its discretion, conduct field audits, onsite audits, or engineering reviews regarding the matters set forth in the

report or notice. The Staff may also require the applicant to provide such additional or other information or documentation that the Staff determines is reasonably necessary to ensure compliance with this article and the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established in Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

(4) Except for the total amount of an applicant's expenditures, any and all financial information contained within an applicant's application, monthly status reports or notice of project completion, including, but not limited to, the cost of fiber or equipment and any other itemized expenditures, is and shall be treated as confidential and proprietary information. Such confidential and proprietary information may be submitted by the applicant to the Staff and/or the department under seal; and such information, if submitted under seal, shall be exempt from the provisions of the Mississippi Public Records Act of 1983 and withheld from public disclosure.

(5) If the Public Utilities Staff, after reviewing monthly status reports or a notice of project completion, determines that an applicant's project is not in compliance with this article, the Staff shall so notify the applicant in writing and provide the applicant with a reasonable opportunity to bring its project into compliance. If the Staff thereafter determines that the applicant has failed to bring its project into compliance, the Staff shall provide written notice of same to the applicant and the department.

(6) If the Staff, after reviewing a notice of project completion, finds that a funded project is in compliance with this article, then the Staff shall provide a written notice of compliance to the applicant and to the department.

(7) An applicant found by the Public Utilities Staff to be fully or materially noncompliant with this article shall return to the state all or a portion of the grant monies received, as determined by the department. Applicants shall confirm their understanding of these terms in their primary and/or secondary applications.

(8) The Mississippi Public Utilities Staff shall ensure grant monies are spent in compliance with this article and in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established in Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Upon request of the Governor, Lieutenant Governor, the Speaker of the House, the Chairman of the Senate Energy Committee or the Chairman of the House Public Utilities Committee, the Staff shall provide a report of the status of the Grant Programs, provided that said report does not disclose any confidential or proprietary information.

HISTORY: Laws, 2020, ch. 487, § 6, eff from and after passage (became law without the Governor's signature on July 9, 2020); Laws, 2020, 495, § 1, eff from and after passage (became law without the Governor's signature on September 1, 2020).

Editor's Note — Laws of 2020, ch. 487, § 7, effective July 9, 2020, renumbered § 8

by Laws of 2020, ch. 495, § 1, effective September 1, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Amendment Note — The 2020 amendment made no change to the section as it was enacted by Section 6 of Chapter 487, Laws of 2020.

CHAPTER 6.

MUNICIPAL GAS AUTHORITY OF MISSISSIPPI LAW

§ 77-6-9. Membership in authority after its creation; withdrawal.

OPINIONS OF THE ATTORNEY GENERAL

A municipality in Mississippi may contract with a public non-profit corporation to obtain natural gas; however, no authority is found for a municipality to become a member of a nonprofit corporation of another state or to enter into an interlocal agreement with a nonprofit corporation of another state. Neither is authority found for municipalities of other states to become members of the Municipal Gas Authority of Mississippi. Collins, July 18, 2003, A.G. Op. 03-0294.

CHAPTER 7.

MOTOR CARRIERS

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GENERAL PROVISIONS

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§ 77-7-7. Definitions.

Whenever used in this chapter unless expressly stated otherwise:

(a) The term "person" means individual, firm, copartnership, corporation, company, association or joint-stock association, and includes any trustee, receiver, assignee or personal representative thereof.

(b) The term "commission" means the Mississippi Transportation Commission.

(c) The term "highway" means every public highway or place of whatever nature open to the use of the public for purposes of vehicle travel in this state, including the streets and alleys in towns and cities.

(d) The term "motor vehicle" and "vehicle" means any vehicle, machine, tractor, trailer or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property; such term, however, does not include any vehicle, locomotive or car operated exclusively on a rail or rails.

(e) The term "common carrier by motor vehicle" means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or household goods.

(f) The term "contract carrier by motor vehicle" means any person, not included under paragraph (e) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or household goods.

(g) The term "restricted motor carrier" means all carriers of property, except household goods, by motor vehicle for compensation.

(h) The "services" and "transportation" to which this chapter applies include all vehicles operated by, for or in the interest of any motor carrier irrespective of ownership or contract, express or implied, together with all facilities and property operated or controlled by any such carrier or carriers and used in the transportation of passengers or property or in the performance of any service in connection therewith.

(i) The term "certificate" means a certificate of public convenience and necessity issued by the commission to common carriers by motor vehicle and restricted common carriers by motor vehicle under this chapter.

(j) The term "permit" means a permit issued by the commission to contract carriers by motor vehicle under this chapter.

(k) The term "interstate permit" means a permit issued under the terms of this chapter to the holder of a certificate of public convenience and necessity, a permit, or other operating authority from the U.S. Department of Transportation.

(*l*) The term "owner" or "operator" and "owner and operator" means any individual, firm, copartnership, corporation, company, association or joint-stock association, and includes any trustee, receiver, assignee or personal representative thereof, to whom or to which a certificate of convenience and necessity or permit or interstate permit has been issued by the commission.

(m) The term "vanpooling" means a nonprofit arrangement entered into to provide for the transportation of persons to and from their places of employment utilizing a motor vehicle manufactured primarily for the transporting of not less than eight (8) nor more than fifteen (15) people, and

where the costs of operating said vehicle, including reasonable vehicle depreciation costs, are paid for by those people utilizing such arrangement.

(n) The term "gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(o) The term "gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(p) The term "department" means the Department of Public Safety.

(q) The term "division" means the Commercial Transportation Enforcement Division within the department.

HISTORY: Codes, 1942, §§ 7634, 7677-05; Laws, 1938, ch. 142; Laws, 1948, ch. 327, § 14; Laws, 1980, ch. 343, § 1; Laws, 1995, ch. 338, § 1; Laws, 2007, ch. 304, § 1, eff from and after July 1, 2007; Laws, 2018, ch. 332, § 1, eff from and after passage (approved March 8, 2018).; Laws, 2021, ch. 478, § 3, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in (f), substituted "paragraph (e)" for "subsection (e)"; and added (p) and (q).

OPINIONS OF THE ATTORNEY GENERAL

Since there is no direct conflict between Section 601 of the Federal Aviation Administration Authorization Act of 1994 and this section, nor does the state criminal statute frustrate the purposes of the federal legislation, the Attorney General is unable to state that the federal legislation preempts the enforcement of the criminal provisions of Section 77-1-11. Herbert, February 15, 1995, A.G. Op. #95-0007.

§ 77-7-11. Obedience to chapter required.

No motor carrier shall operate any motor vehicle for the transportation of passengers or property for compensation on any highway in this state, except in accordance with the provisions of this chapter, and every such motor carrier is hereby declared to be subject to control, supervision and regulation by the commission for permitting purposes and by the department, through the division, for enforcement purposes. Nothing in this chapter shall confer any proprietary or property rights in the use of the public highways.

HISTORY: Codes, 1942, § 7636; Laws, 1938, ch. 142; Laws, 2021, ch. 478, § 4, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment added "for permitting purposes and by the department, through the division, for enforcement purposes" at the end of the first sentence.

§ 77-7-13. Powers and duties of commission.

(1) It shall be the duty of the commission and the commission shall have the power:

(a) To regulate common carriers by motor vehicle and contract carriers by motor vehicle not exempted in this chapter, doing business in this state, and to that end, the commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform system of accounts, records and reports, preservation of records, and safety of operation and equipment, including maximum hours of service of employees.

(b) To administer the provisions of this chapter concerning certificates of public convenience and necessity, permits, performance bond, insurance, statutorily prescribed fees, identification plates and trip permits, and carrier service, rates and charges, to make necessary orders in connection therewith, and to prescribe rules, regulations and procedure for such administration; however, the enforcement of the provisions of this chapter on the roads, streets and highways of this state shall fall under the jurisdiction of the department, through the division.

(c) To inquire into the organization of motor carriers, and into the management of their businesses, to keep itself informed as to the manner and method in which the same is conducted, and to transmit to the Legislature, from time to time, such recommendations as to additional legislation relating to such carriers as the commission may deem necessary.

(2) The commission may from time to time establish such just and reasonable classifications of groups of carriers included in the terms "common carrier by motor vehicle" and "contract carrier by motor vehicle," as the special nature of the services performed by such carriers shall require, and the commission may from time to time establish such just and reasonable rules, regulations and requirements, consistent with the provisions of this chapter, to be observed by the carriers so classified or grouped, as the commission deems necessary or desirable in the public interest.

(3) The commission may from time to time enter into joint and cooperative agreements with other governmental agencies in regard to safety, forms, operating procedures and regulatory jurisdiction.

(4) The rules, regulations, requirements and classifications adopted in pursuance to the power and duty of the commission by this section granted and imposed shall conform as nearly as practicable to the rules, regulations, requirements and classifications promulgated by the Interstate Commerce Commission, the United States Department of Transportation, or any other appropriate governmental agency.

(5) The commission shall not have the duty nor the power to regulate the rates of common carriers by motor vehicle which undertake, whether directly or by a lease or any other arrangement, to transport household goods.

(6) The commission shall not have the duty nor the power to regulate the rates of contract carriers by motor vehicle, who or which, under special and individual contract or agreements, and whether directly or by a lease or any other arrangement, transport household goods.

HISTORY: Codes, 1942, § 7637; Laws, 1938, ch. 142; Laws, 1968, ch. 466; Laws,

1995, ch. 338, § 3; Laws, 2004, ch. 501, § 1, eff from and after July 1, 2004; Laws, 2021, ch. 478, § 5, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in (1), deleted former (b), which read: "For the purpose of carrying out the provisions of this chapter, to avail itself of the special information of the Mississippi Transportation Commission in promulgating safety requirements and in considering applications for certificates or permits with particular reference to conditions of the public highway or highways involved, and the ability of the said public highway or highways to carry added traffic; the Mississippi Transportation Commission upon request of the commission shall furnish such information"; rewrote former (c), which read: "To administer, execute and enforce all other provisions of this chapter, to make necessary orders in connection therewith, and to prescribe rules, regulations and procedure for such administration" and redesignated it (b); and redesignated former (d) as (c).

§ 77-7-15. Rules and regulations concerning certificates of public convenience and necessity, permits, performance bonds, insurance, fees, identification plates, rates and charges by commission; rules and regulations, concerning enforcement of chapter by department, through division.

The commission shall prescribe, issue, amend and rescind such reasonable rules and regulations as may be reasonably necessary or appropriate to carry out the provisions of this chapter concerning certificates of public convenience and necessity, permits, performance bond, insurance, statutorily prescribed fees, identification plates and trip permits, and carrier duties, service, rates and charges; however, the prescription, issuance, amendment and rescission of reasonable rules and regulations concerning the enforcement of the provisions of this chapter on the roads, streets and highways of this state shall fall under the jurisdiction of the department, through the division, and shall not be subject to this section.

No rule or regulation shall be effective until thirty (30) days after copies of the proposed rule or regulation have been mailed to intrastate motor carriers affected thereby and until a notice, setting forth the terms or substance thereof and the time and place of a hearing thereon, has been published in a newspaper or newspapers of general circulation in the state and filed with the Secretary of State pursuant to the Mississippi Administrative Procedures Law. Such hearing may be held at any time after twenty (20) days following the date of publication of such notice, but such rules or regulations shall not become effective until a hearing thereon. The commission may make its initial set of rules and regulations effective at the end of such thirty-day period, subject to review thereof. All rules and regulations of the commission shall be filed with its secretary and shall be readily available for public inspection and examination during reasonable business hours. Any interested person shall have the right to petition the commission for issuance, amendment or repeal of a rule or regulation.

HISTORY: Codes, 1942, § 7637; Laws, 1938, ch. 142; Laws, 1968, ch. 466; Laws,

1992, ch. 440, § 1, eff from and after passage (approved May 4, 1992); Laws, 2021, ch. 478, § 6, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment divided the former section into two paragraphs; and in the first paragraph, added "concerning certificates of public convenience... and shall not be subject to this section" at the end.

§ 77-7-16. Supervision and inspection of safe operation and use of certain motor vehicles.

(1) Supervision and inspection of the safe operation and the safe use of equipment of motor vehicles operating in the state shall be a specified duty of the Mississippi Department of Public Safety. The Mississippi Transportation Commission shall promulgate as its own the rules, regulations, requirements and classifications of the United States Department of Transportation or any successor federal agency thereof charged with the regulation of motor vehicle safety. The department shall enforce such rules, regulations, requirements and classifications. The Mississippi Transportation Commission shall establish a system of reciprocity with other states to facilitate the inspection of motor vehicles provided for in this subsection.

(2) The Mississippi Department of Public Safety shall have the authority to inspect for safe operation and safe use of equipment the following motor vehicles:

(a) Each holder of a certificate of convenience and necessity, a permit to operate as a contract carrier or interstate permit;

(b) Any individual, corporation or partnership engaged in a commercial enterprise operating a single motor vehicle or those in combination with a manufacturer's gross vehicle rating of more than ten thousand (10,000) pounds; and

(c) Any individual, corporation or partnership operating a motor vehicle of any gross weight transporting hazardous material that requires placarding under the Federal Hazardous Material Regulations.

(3) This section shall not apply to the following:

(a) Motor vehicles employed to transport school children and teachers;

(b) Motor vehicles owned and operated by the United States, District of Columbia or any state or any municipality or any other political subdivision of this state;

(c) Motor vehicles engaged in the occasional transportation of personal property without compensation by individuals which is not in the furtherance of a commercial enterprise;

(d) Motor vehicles engaged in the transportation of human corpses or sick or injured persons;

(e) Motor vehicles engaged in emergency or related operations;

(f) Motor vehicles engaged in the private transportation of passengers;

(g) Motor vehicles, including pickup trucks, that have a GVWR or GCWR of twenty-six thousand (26,000) pounds or less, operating intrastate only, provided that such vehicle does not:

(i) Transport hazardous material requiring a placard; or

(ii) Transport sixteen (16) or more passengers, including the driver.

(h) Motor vehicles owned and operated by any farmer who:

(i) Is using the vehicle to transport agricultural products from a farm owned by the farmer, or to transport farm machinery or farm supplies to or from a farm owned by the farmer;

(ii) Is not using the vehicle to transport hazardous materials of a type or quantity that requires the vehicle to be placarded in accordance with the Federal Hazardous Material Regulations in CFR 49 part 177.823; and

(iii) Is using the vehicle within one hundred fifty (150) air miles of the farmer's farm, and the vehicle is a private motor carrier of property.

(i) Motor vehicles engaged in the transportation of logs and pulpwood between the point of harvest and the first point of processing the harvested product;

(j) Motor vehicles engaged exclusively in hauling gravel, soil or other unmanufactured road building materials;

(k) As to hours of service only, utility service vehicles owned or operated by public utilities subject to regulation by the commission, while in intrastate commerce within this state, with a manufacturer's gross vehicle rating of less than twenty-six thousand one (26,001) pounds, unless the vehicle:

(i) Transports hazardous materials requiring a placard; or

(ii) Is designed or used to transport sixteen (16) or more people, including the driver.

(4) Anyone who violates or fails to comply with this section shall be subject to the penalties as provided for in Section 77-7-311, Mississippi Code of 1972.

HISTORY: Laws, 1988, ch. 544, § 1; Laws, 1993, ch 561, § 2; Laws, 2005, ch. 446, § 1; Laws, 2007, ch. 304, § 2; Laws, 2007, ch. 498, § 1, eff from and after July 1, 2007; Laws, 2021, ch. 478, § 7, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in (1), deleted "the Mississippi Transportation Commission and the Motor Carrier Division of the Mississippi Highway Safety Patrol within" preceding "the Mississippi Department of Public Safety," divided the former second sentence into the present second and third sentences by substituting "vehicle safety. The department shall enforce" for "vehicle safety and, along with the Motor Carrier Division of the Mississippi Highway Safety Patrol shall enforce," and deleted the former third sentence, which required the Department of Public Safety to provide training to certain Mississippi Department of Transportation law enforcement officers; and in (2), deleted "Mississippi Transportation Commission and the Motor Carrier Division of the Mississippi Highway Safety Patrol within the" preceding "Mississippi Department of Public Safety."

§ 77-7-17. Prohibited interests of members or employees of commission or department.

No member of the commission or the department, and no employee of the commission or the department appointed or employed in the administration of this chapter, shall in any manner have pecuniary interest in, own any securities of, or hold any position with any motor carrier.

HISTORY: Codes, 1942, § 7638; Laws, 1938, ch. 142; Laws, 1993, ch 561, § 3, eff from and after October 1, 1993; Laws, 2021, ch. 478, § 8, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment inserted "or the department" twice.

§ 77-7-21. Engagement in intrastate operation by restricted motor carriers.

No restricted motor carrier not exempted in this chapter shall engage in intrastate operation on any highway within the state unless such carrier is in compliance with the requirements of the laws and regulations of the commission and the department.

HISTORY: Laws, 1995, ch. 338, § 19, eff from and after passage (approved March 10, 1995); Laws, 2018, ch. 332, § 2, eff from and after passage (approved March 8, 2018); Laws, 2021, ch. 478, § 9, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment added "and the department" at the end.

INSPECTION FEES; IDENTIFICATION PLATES; IDENTIFICATION TRIP PERMITS

Sec.
77-7-127. Disposition of funds collected by commission under this chapter; funding of agency expenses; deposit of monies into State General Fund.

§ 77-7-127. Disposition of funds collected by commission under this chapter; funding of agency expenses; deposit of monies into State General Fund.

All funds collected by the commission under the provisions of this chapter shall be deposited in the State Treasury to the credit of the commission's regulation fund for use by the commission for the administration of the laws of this state relative to the inspection, control and supervision of the business, service or accounts of motor carriers subject to this chapter.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Codes, 1942, § 7694-01; Laws, 1948, ch. 327, § 7; Laws, 1952, ch. 330, § 7; Laws, 1987, ch. 309, § 10; Laws, 1987, ch. 343, § 8; Laws, 1993, ch 561, § 17; Laws, 2016, ch. 459, § 58, eff from and after July 1, 2016; Laws, 2018, ch. 332, § 9, eff from and after passage (approved March 8, 2018); Laws, 2021, ch. 478, § 10, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in the first paragraph, deleted "and enforcement" preceding "of the laws," and "equipment" preceding "service or accounts."

PENALTIES

Sec.
77-7-311. Penalties.

§ 77-7-311. Penalties.

(1) Any person violating any provisions of this chapter, or any rule, regulation, requirement or order thereunder, or any term or condition of any certificate or permit, for which a penalty is not otherwise provided in this chapter, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be fined not less than Twenty-five Dollars ($25.00) and not more than Five Hundred Dollars ($500.00) for the first offense and not less than Five Hundred Dollars ($500.00) and not more than One Thousand Dollars ($1,000.00) for each subsequent offense. Each day of violation shall constitute a separate offense.

(2) Any person, whether carrier, shipper, consignee, or any officer, employee, agent or representative thereof, who shall knowingly offer, grant or give, or solicit, accept or receive any rebate, concession or discrimination in violation of any provision of this chapter, or who by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease or bill of sale, or by any other means or device, shall knowingly and willfully assist, suffer or permit any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare or charge, or who shall knowingly and willfully, by any such means or otherwise, fraudulently seek to evade or defeat regulation as in this chapter provided for motor carriers, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be fined not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00) for the first offense and not less than Five Hundred Dollars ($500.00) and not more than One Thousand Dollars ($1,000.00) for any subsequent offense.

(3) Any owner, operator or driver of any vehicle, who is required by any law or by any rule or regulation of the commission or the department to stop at any inspection station or submit to an inspection, who willfully fails or refuses to do so, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00), or more than One Thousand Dollars ($1000.00), or by confinement in the county jail for not more than thirty (30) days, or by both fine and jail sentence.

(4) Any individual, corporation or partnership operating a motor vehicle transporting hazardous material that is found to be in violation of any rule, regulation or requirement as provided by Section 77-7-16 shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not

less than Two Hundred Dollars ($200.00) or more than Five Hundred Dollars ($500.00) for the first offense, and not less than Five Hundred Dollars ($500.00) and not more than One Thousand Dollars ($1,000.00) for each subsequent offense. Each day of violation shall constitute a separate offense.

(5) Any person operating or attempting to operate a motor vehicle which has been placed out of service by a motor carrier inspector shall be fined One Thousand Dollars ($1,000.00).

HISTORY: Codes, 1942, §§ 7679, 7692-06; Laws, 1938, ch. 142; Laws, 1958, ch. 505, § 7; Laws, 1960, ch. 406, § 3; Laws, 1988, ch. 544, § 2; Laws, 1993, ch 561, § 18, eff from and after October 1, 1993; Laws, 2021, ch. 478, § 11, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in (3), inserted "or the department."

ADMINISTRATION AND ENFORCEMENT

Sec.

77-7-330. Commercial Transportation Enforcement Division of the Department of Public Safety to have jurisdiction over enforcement of the provisions of this chapter on Mississippi roads, streets and highways.
77-7-331. Duties of enforcement officers.
77-7-333. Training of enforcement officer; funding of agency expenses; deposit of monies into State General Fund.
77-7-335. Authority of enforcement officers.
77-7-337. Purchase of necessary equipment authorized; funding of agency expenses; deposit of monies into State General Fund.
77-7-339. Payment of salaries and expenses shall be from the motor carrier regulation account; funding of agency expenses; deposit of monies into State General Fund.
77-7-341. Cooperation with other agencies authorized.
77-7-343. DPS Motor Carrier Enforcement Fund created; source and use of monies.

§ 77-7-330. Commercial Transportation Enforcement Division of the Department of Public Safety to have jurisdiction over enforcement of the provisions of this chapter on Mississippi roads, streets and highways.

(1) From and after July 1, 2021, the department, through the division, shall have jurisdiction over all matters of enforcement of the provisions of this chapter on the roads, streets and highways of this state and shall prescribe such rules and regulations as are necessary therefor. The jurisdiction and authority of the department under this section shall be in addition to any other jurisdiction and authority provided to the department under any other law. The powers and duties related to the administration of this chapter which do not concern enforcement on the roads, streets and highways of this state shall remain with the commission.

(2) On July 1, 2021, the Mississippi Department of Transportation and/or the commission shall transfer to the department the employees, equipment,

inventory, size and weights, computer systems, IFTA, grants, stationary and portable weigh stations, support staff, weigh-in-motion scales and vehicles, state and federal funding, and resources used to enforce the provisions of this chapter on the roads, streets and highways of this state. The department shall consult and work with the Bureau of Building, Grounds and Real Property of the Department of Finance and Administration for the effective transfer to the department of any office space that was assigned for the use of the enforcement of the provisions of this chapter on the roads, streets and highways of this state, except the office space used by the Enforcement Division of the Department of Transportation located within the Billy McCoy Office Building in Jackson, Mississippi.

(3) Any reference in any statute, rule or regulation to law enforcement duties being performed by the commission or the Mississippi Department of Transportation requiring the use of vehicles to enforce shall be construed to mean law enforcement duties being performed by the division.

(4) The Mississippi State Personnel Board PIN numbers the Mississippi Department of Transportation has assigned to persons in law enforcement and support of enforcement of this chapter at the time of the transfer shall be transferred over to the department. The transfer of personnel shall be commensurate with the number and classification of positions allocated to that law enforcement. All salaries and benefits shall remain the same until further agreement. Rank and structure shall be revised through the division as is practical for proper supervision. All transferred personnel shall posses the same state service protections with the Mississippi State Personnel Board that they possessed before the transfer.

(5) All accrued personal leave earned pursuant to Section 25-3-93, accrued major medical leave earned pursuant to Section 25-3-95, accrued state compensatory leave balances earned pursuant to Section 25-3-92, and compensatory leave earned pursuant to the Fair Labor Standards Act (FLSA) shall transfer from the Mississippi Department of Transportation to the Department of Public Safety for all employees transferred to the department under this chapter.

HISTORY: Laws, 2021, ch. 478, § 1, eff from and after July 1, 2021.

Editor's Note — Laws of 2021, ch. 478, § 25, provides:
"SECTION 25. Section 1 of this act shall be codified in Title 77, Chapter 7, Mississippi Code of 1972."

§ 77-7-331. Duties of enforcement officers.

The chief enforcement officer and the inspectors, employed pursuant to the authority granted in Section 77-1-21, shall be responsible for enforcing and investigating all alleged violations of this chapter, and the rules, regulations and general orders of the commission promulgated thereunder; however, beginning July 1, 2021, the enforcement and investigation of alleged violations of this chapter, and the rules, regulations and general orders promulgated

thereunder, shall fall under the jurisdiction of the department, through the division. In the performance of their duties such employees shall give particular attention to the enforcement of the commission's or the department's safety rules and regulations; the provisions of this chapter applicable to rates, charges and practices of motor carriers; the provisions prohibiting unlawful preference, concession, rebate, or discrimination; the adequacy of service, equipment and facilities of motor carriers; and the requirements respecting certificate of public convenience and necessity or permits as set forth in this chapter.

HISTORY: Codes, 1942, § 7692-03; Laws, 1958, ch. 505, § 4, eff July 1, 1958; Laws, 2021, ch. 478, § 12, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in the first sentence, added "however, beginning July 1, 2021...through the division"; and in the last sentence, inserted "or the department's."

§ 77-7-333. Training of enforcement officer; funding of agency expenses; deposit of monies into State General Fund.

After selection, the enforcement officers and the inspectors of the division shall go through thirty (30) days of intensive instruction of the laws of this state pertaining to the Mississippi Department of Transportation and the Department of Public Safety, together with the rules and regulations of both of these agencies, and the laws of this state pertaining to arrest. The expenses of attending such school shall be paid out of the monies appropriated by the Legislature to the department.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Codes, 1942, § 7692-02; Laws, 1958, ch. 505, § 3; Laws, 1987, ch. 343, § 9; Laws, 1993, ch 561, § 19; Laws, 2016, ch. 459, § 59, eff from and after July 1, 2016; Laws, 2018, ch. 332, § 10, eff from and after passage (approved March 8, 2018); Laws, 2021, ch. 478, § 13, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in the first paragraph, in the first sentence, substituted "the enforcement officers and the inspectors of the division" for "the chief enforcement officer and the inspectors," and substituted "together with the rules and regulations of both of these agencies" for "together with rules and regulations of all these departments," and rewrote the last sentence, which read: "The expenses of attending such school shall be paid out of the commission's regulation fund on presentation of paid bills for travel and subsistence to the secretary of the commission."

§ 77-7-335. Authority of enforcement officers.

(1) All division inspectors on duty shall wear uniforms, shall have the

right to bear arms, and shall have the authority to make arrests and hold and impound any vehicle and the contents thereof which is being operated in violation of this chapter or the commission's or the department's rules, regulations or general orders promulgated thereunder.

(2) All inspectors shall have the authority to enforce all of the laws, rules and regulations of the commission and the department under this chapter upon all highways in the state and the rights-of-way of such highways and other properties as defined in Section 77-7-261; except that if any person commits an offense in violation of this chapter or the rules and regulations of the commission or the department upon a highway in the state and be pursued by an enforcement officer or inspector of the division, such enforcement officer or inspector may pursue and apprehend such offender upon any of the highways in this state, or to any other place to which such offender may flee.

(3) All inspectors shall have the authority to aid and assist any law enforcement officer whose life or safety is in jeopardy and may arrest without warrant any fugitive from justice who has escaped or who is using the highways in the state in an attempt to flee. Inspectors of the division may assist other law enforcement agencies in searching for convicted felons who have escaped or for alleged felons where there is probable cause to believe that the person being sought committed the felony and a felony had actually been committed.

(4) Upon request of a sheriff of any county or the chief of police of any community, all division inspectors have the authority to assist in traffic control during time of natural disasters, such as hurricanes, tornados or floods.

HISTORY: Codes, 1942, § 7692-04; Laws, 1958, ch. 505, § 5; Laws, 1993, ch 561, § 20, eff from and after October 1, 1993; Laws, 2018, ch. 332, § 11, eff from and after passage (approved March 8, 2018); Laws, 2021, ch. 478, § 14, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in (1), inserted "division" and "or the department's"; in (2), inserted "and the department under this chapter" and substituted "regulations of the commission or the department upon a highway in the state and be pursued by an enforcement officer or inspector of the division, such enforcement officer or inspector may pursue" for "regulations of this commission upon a highway in the state and be pursued by a member or inspector of the commission, such member may pursue"; in (3), in the last sentence, deleted "With the approval of the commission or its designee" from the beginning, and substituted "division" for "commission"; in (4), deleted "the Mississippi Highway Patrol" following "Upon request of" and substituted "community, all division inspectors" for "community and with the consent of the commission, all inspectors"; and deleted former (5), which read: "Nothing in this section shall be construed as granting the commission general police powers."

§ 77-7-337. Purchase of necessary equipment authorized; funding of agency expenses; deposit of monies into State General Fund.

The division is hereby authorized and empowered to purchase all necessary equipment to enforce the provisions of this chapter.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Codes, 1942, § 7692-08; Laws, 1958, ch. 505, § 9; Laws, 1987, ch. 343, § 10; Laws, 2016, ch. 459, § 61, eff from and after July 1, 2016; Laws, 2018, ch. 332, Laws, 2018, ch. 332, § 12, eff from and after passage (approved March 8, 2018); Laws, 2021, ch. 478, § 15, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in the first paragraph, substituted "division" for "commission" and deleted "and to pay for the same out of the commission's regulation fund" at the end.

§ 77-7-339. Payment of salaries and expenses shall be from the motor carrier regulation account; funding of agency expenses; deposit of monies into State General Fund.

The reasonable and necessary expenses of the administration of the duties imposed on the commission by this chapter, shall be paid out of the special fund in the State Treasury designated as the commission's regulation fund, upon requisition and warrants in the same manner provided by law for the disbursements of appropriations for the commission. An itemized account shall be kept of all receipts and expenditures and shall be reported to the Legislature by the commission.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Codes, 1942, § 7692-09; Laws, 1958, ch. 505, § 10; Laws, 1987, ch. 343, § 11; Laws, 2016, ch. 459, § 60, eff from and after July 1, 2016; Laws, 2018, ch. 332, § 13, eff from and after passage (approved March 8, 2018); Laws, 2021, ch. 478, § 16, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in the first paragraph, substituted "The reasonable and necessary expenses of the administration" for "The salary of the chief enforcement officer and the inspectors, and the reasonable and necessary expenses of such employees and the administration."

§ 77-7-341. Cooperation with other agencies authorized.

For the purpose of administering the provisions of this chapter, the commission is directed to cooperate with and use the services of the enforce-

ment officers and inspectors of the department, and the commission shall utilize the facilities and equipment of the inspection stations maintained by the division. However, in utilizing these personnel and facilities, the commission shall not interfere with or impede the performance by the personnel of the duties and responsibilities otherwise assigned to them.

HISTORY: Codes, 1942, § 7692-05; Laws, 1958, ch. 505, § 6; Laws, 1993, ch 561, § 21, eff from and after October 1, 1993; Laws, 2021, ch. 478, § 17, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment rewrote the first sentence, which read: "For the purpose of administering and enforcing the provisions of this chapter, the commission shall have the power, and is directed to cooperate with and use the services of the members of the highway safety patrol and the inspectors employed by the Mississippi Department of Transportation, and the commission shall utilize the facilities and equipment of the inspection stations maintained by the Mississippi Department of Transportation."

§ 77-7-343. DPS Motor Carrier Enforcement Fund created; source and use of monies.

There is hereby created a special fund in the State Treasury, to be known as the "DPS Motor Carrier Enforcement Fund." The fund shall consist of monies appropriated by act of the Legislature and monies transferred from the Mississippi Department of Transportation. Money in the fund shall only be utilized by the Department of Public Safety's Commercial Transportation Enforcement Division to defray expenses for officers' salaries and other costs to implement and enforce the provisions of this chapter. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund.

HISTORY: Laws, 2021, ch. 478, § 2, eff from and after July 1, 2021.

CHAPTER 9.
RAILROADS AND OTHER COMMON CARRIERS

ARTICLE 3.
RAILROADS AND RAILROAD CORPORATIONS.

SAFETY

§ 77-9-247. Railroads shall erect "railroad crossbuck."

OPINIONS OF THE ATTORNEY GENERAL

Counties are responsible for the installation and maintenance of necessary warning signs and pavement markings at rail crossings on roads under their juris-

diction subject to approval by the State Highway Commission. Fortier, Mar. 29, 2002, A.G. Op. #02-0109.

§ 77-9-251. Highway crossings and bridges.

OPINIONS OF THE ATTORNEY GENERAL

Municipality has authority and affirmative duty to repair and maintain city streets and to this end, municipality may contract with railroad company to improve railroad crossings at intersections city streets and may use municipal funds, employees and equipment for such purposes; however, municipality must obtain approval of Department of Transportation of contracts concerning railroad crossings and of improvements made by municipality at railroad crossings; furthermore, municipality may not contract to assume responsibility or costs of improvements which are by law responsibility of railroad. Scott Nov. 3, 1993, A.G. Op. #93-0727.

§ 77-9-252. Railroad grade crossings; private entity to pay cost of installation under certain circumstances.

OPINIONS OF THE ATTORNEY GENERAL

The statute did not apply to a railroad crossing on a city street that was to be reconstructed after having been closed for many years. Brown, Mar. 9, 2001, A.G. Op. #01-0131.

ARTICLE 7.
TELEGRAPH AND TELEPHONE COMPANIES.

§ 77-9-711. Erection of telegraph and telephone lines.

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors may charge actual damages for use of county rights-of-way by a communications company, but only after a finding of fact is made in accordance with Southern Bell v. City of Meridian, 131 So. 2d 666, 241 Miss. 678 (Miss. 1961); if that case has no application to the circumstances presented, then a county may charge damages for use of its rights-of-way; however, there is no statutory authority for a county to charge a franchise fee or other charges for the mere operation of a communications company in the county without regard to whether the company uses the public rights-of-way. Haque, Feb. 2, 2001, A.G. Op. #2000-0747.

§ 77-9-713. Local authorities may regulate construction and maintenance of lines.

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors may charge actual damages for use of county rights-of-way by a communications company, but only after a finding of fact is

made in accordance with Southern Bell v. City of Meridian, 131 So. 2d 666, 241 Miss. 678 (Miss. 1961); if that case has no application to the circumstances presented, then a county may charge damages for use of its rights-of way; however, there is no statutory authority for a county to charge a franchise fee or other charges for the mere operation of a communications company in the county without regard to whether the company uses the public rights-of-way. Haque, Feb. 2, 2001, A.G. Op. #2000-0747.

§ 77-9-715. Liability for damages caused by erection, continuance and use of lines.

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors may charge actual damages for use of county rights-of-way by a communications company, but only after a finding of fact is made in accordance with Southern Bell v. City of Meridian, 131 So. 2d 666, 241 Miss. 678 (Miss. 1961); if that case has no application to the circumstances presented, then a county may charge damages for use of its rights-of way; however, there is no statutory authority for a county to charge a franchise fee or other charges for the mere operation of a communications company in the county without regard to whether the company uses the public rights-of-way. Haque, Feb. 2, 2001, A.G. Op. #2000-0747.

§ 77-9-717. Exercise of eminent domain for construction of new lines.

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors may charge actual damages for use of county rights-of-way by a communications company, but only after a finding of fact is made in accordance with Southern Bell v. City of Meridian, 131 So. 2d 666, 241 Miss. 678 (Miss. 1961); if that case has no application to the circumstances presented, then a county may charge damages for use of its rights-of way; however, there is no statutory authority for a county to charge a franchise fee or other charges for the mere operation of a communications company in the county without regard to whether the company uses the public rights-of-way. Haque, Feb. 2, 2001, A.G. Op. #2000-0747.

CHAPTER 13.

REGULATION OF EXCAVATIONS NEAR UNDERGROUND UTILITY FACILITIES

Sec.
77-13-9. Marking location of underground facilities; timeliness.

§ 77-13-9. Marking location of underground facilities; timeliness.

(1) Every person owning or operating underground utility lines or underground facilities shall, upon receiving advance notice of the commencement of

excavation, in accordance with Section 77-13-5, make an investigation, and shall report through the use of the PRIS the status of the work performed, within two (2) working days from the time notice is provided in accordance with this chapter to Mississippi 811, Inc., to determine the approximate location of its underground utility lines or underground facilities in the area of the proposed excavation, and shall either: (a) mark the approximate location of underground utility lines and underground facilities in or near the area of the excavation, so as to enable the person engaged in excavation work to locate the lines and facilities in advance of and during the excavation work and notify the excavator through the PRIS that the facilities have been marked; (b) advise through the PRIS that it has no underground utility lines or underground facilities in the excavation area; or (c) advise through the PRIS that it can locate its underground utility lines or underground facilities in the excavation area only by excavation. If an operator can locate its underground utility lines or underground facilities in the excavation area only by excavation and has given proper notice of such, that operator shall be allowed a reasonable amount of additional time, not to exceed four (4) working days from the day the original notice was provided in accordance with this chapter, to mark the approximate location of the underground utility lines or underground facilities.

(2) In lieu of such marking, the operator may request to be present at the site upon commencement of the excavation, so long as the operator complies within two (2) working days of the receipt of the notice.

(3) When an excavator, upon arriving at an excavation site, sees evidence of unmarked underground utility lines or underground facilities or encounters an unmarked underground utility line or underground facility on an excavation site after excavation has commenced where notice of intent has been made in accordance with the provisions of this chapter, that excavator must immediately contact Mississippi 811, Inc. All operator(s) thus notified must contact the excavator within four (4) hours and inform the excavator of any of their known underground facilities, active or abandoned, at the site of the excavation.

(4) When marking the approximate location of the facilities, the operator shall follow the color code designated and described herein, unless otherwise provided for by specific administrative rule or regulation promulgated pursuant to this chapter, namely:

UTILITY OR TYPE OF FACILITY	GROUP IDENTIFYING COLOR
Electric	Safety Red
Petroleum Product/Hazardous/ Flammable/Corrosive/Toxic Materials, Product and Steam Lines, Gas or Gaseous Material	High Visibility Safety Yellow
Telecommunications (including fiber optics) and CATV	Safety Alert Orange
Potable Water	Safety Precaution Blue

Reclaimed Water, Irrigation, Slurry Lines	Purple
Sewer and Drain Lines	Safety Green
Temporary Survey Markings	High Visibility Pink
Proposed Excavation	White

(5) All utility facilities installed by owners or operators of utilities on or after January 1, 2010, shall be installed in such manner that the utility facility may be located by using a generally accepted electronic locating method.

(6) Except for emergency excavations, if, before the expiration of the two (2) working days' waiting period, all identified facility owners or operators have responded to the locate request and all have indicated that their facilities are either not in conflict or have been marked as indicated through the use of the PRIS, then the person planning to perform excavation or blasting shall be authorized to commence work, subject to the other requirements of this section, without waiting the full two (2) working days.

(7) Upon receiving a design information request, the utility owner or operator shall within seven (7) working days from the time notice is provided in accordance with this chapter to Mississippi 811, Inc., respond by one (1) of the following methods: (a) marking the approximate location of its underground utility lines and underground facilities in the area in accordance with subsection (1) of this section; (b) providing to the person making the design information request the best available description of its underground utility lines and underground facilities in the area which may include drawings or other records maintained by the utility owner or operator; or (c) allowing the person making the design information request or any other authorized person to inspect or copy the drawings or other records for all underground utility lines and utility facilities in the area.

HISTORY: Laws, 1985, ch. 494, § 5; Laws, 1997, ch. 483, § 4; reenacted without change, Laws, 1999, ch. 302, § 5; Laws, 2008, ch. 497, § 4; Laws, 2009, ch. 382, § 3; Laws, 2010, ch. 427, § 2; Laws, 2015, ch. 309, § 3; Laws, 2016, ch. 490, § 10, eff from and after July 1, 2016; Laws, 2020, ch. 357, § 1, eff from and after January 1, 2021.

Amendment Notes — The 2020 amendment, effective January 1, 2021, in (1), substituted "Section 77-13-5" for "Section 77-13-7" and "and shall report" for "and may report," added "and notify the excavator through the PRIS that the facilities have been marked" at the end of (a), and substituted "through the PRIS" for "in writing or by telephone or electronic means" in (b) and (c).

CHAPTER 17

MISSISSIPPI BROADBAND ENABLING ACT

Sec.

77-17-1. Short title.
77-17-3. Definitions.

Sec.

77-17-5. Electric cooperatives authorized to establish, acquire, own broadband affiliates, allow broadband affiliates or unaffiliated broadband operators to operate broadband system on their electric delivery system, and charge affiliates certain fees; restrictions on use of electric energy sales revenues; economic feasibility study required before electric cooperatives offer broadband services.

77-17-7. No expansion of regulatory authority of state agencies, instrumentalities or political subdivisions beyond state or federal laws and regulations in place on January 30, 2019.

77-17-9. Electric cooperatives prohibited from: allowing use of electric delivery system by affiliate to diminish reliability of the system, requiring purchase of broadband services from affiliate as condition of receiving electric energy from the cooperative, and disconnecting electric service for nonpayment of broadband services provided by affiliate.

77-17-11. Use of cooperative's electric delivery system for provision of broadband services by affiliate not considered burden on real property on which electric delivery system is located; landowner's remedies for damages caused by use of electric delivery system by affiliate.

77-17-13. Liberal construction of chapter.

77-17-15. Annual audit of compliance with chapter; notice to members of election of board of directors, meetings, and election results.

§ 77-17-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Broadband Enabling Act."

HISTORY: Laws, 2019, ch. 301, § 1, eff from and after passage (approved January 30, 2019).

§ 77-17-3. Definitions.

As used in this chapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

(a) "Broadband affiliate" or "affiliate" means any entity that is (i) wholly or partially owned by an electric cooperative, and (ii) formed to own or operate a broadband system or provide broadband services.

(b) "Broadband service provider" means an entity that provides broadband services to others on a wholesale basis or to end-use customers on a retail basis.

(c) "Broadband operator" means a broadband service provider that owns or operates a broadband system on an electric cooperative's electric delivery system with the electric cooperative's consent.

(d) "Broadband services" means any service that consists of or includes the provision of or connectivity to a high-speed, high-capacity transmission medium that can carry signals from or to multiple sources and that either: (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content or protocol conversion, including any service applications or information service provided over such high-speed access service. As used herein, "broadband services" also includes

video services, voice over Internet protocol services, any wireless services, and Internet protocol-enabled services.

(e) "Broadband system" means the fiber, cables, materials, equipment and other facilities that are used or useful for the provision of broadband services.

(f) "Electric delivery system" means the poles, lines, fiber, cables, broadband system, materials, equipment, easements and other facilities or properties used by an electric cooperative to deliver or facilitate the delivery, sale or use of electric energy.

(g) "Electric cooperative" means an electric power association formed or operating under Sections 77-5-201, et seq.

(h) "Internet protocol-enabled services" means any service, capability, functionality or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communications is voice, data or video.

(i) "Landowner" includes any person or entity holding an interest in real property.

(j) "Video services" means video programming services without regard to delivery technology, including Internet protocol technology ("Internet Protocol television or IPTV") and video programming provided as a part of a service that enables users to access content, information, email or other services offered over the public Internet. The term "video programming" means any programming generally considered comparable to programming provided by a television broadcast station or others.

(k) "Voice over Internet protocol services" means any service that: (i) enables real-time, two-way voice communications that originate from or terminate to the user's location in Internet protocol or any successor protocol; (ii) uses a broadband connection from the user's location; and (iii) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

HISTORY: Laws, 2019, ch. 301, § 2, eff from and after passage (approved January 30, 2019).

§ 77-17-5. Electric cooperatives authorized to establish, acquire, own broadband affiliates, allow broadband affiliates or unaffiliated broadband operators to operate broadband system on their electric delivery system, and charge affiliates certain fees; restrictions on use of electric energy sales revenues; economic feasibility study required before electric cooperatives offer broadband services.

(1) Every electric cooperative is authorized to establish, acquire, and wholly or partially own one or more broadband affiliates.

(2) An electric cooperative may allow its broadband affiliate(s) or an unaffiliated broadband operator to own, lease, construct, maintain and operate a broadband system on the electric cooperative's electric delivery system and to provide broadband services to the public utilizing the electric cooperative's broadband system or other parts of its electric delivery system.

(3) An electric cooperative is not required to implement a broadband system or allow others to use broadband capacity on the electric cooperative's electric delivery system to provide broadband services.

(4) An electric cooperative may determine, in its sole discretion, which broadband operators, if any, may have access to broadband capacity on the electric cooperative's broadband system; and it shall be lawful for an electric cooperative to provide an affiliate or other broadband operator exclusive access to broadband capacity on the electric cooperative's broadband system.

(5)(a) An electric cooperative may charge an affiliate or an unaffiliated broadband operator for the construction, installation, operation, use, and maintenance of those parts of its electric delivery system that are used or may be reserved for use by the affiliate or unaffiliated broadband operator for the provision of broadband services. Any lease of facilities by an electric cooperative to a broadband affiliate that includes the use of the electric cooperative's poles shall specifically include pole attachment fees to be paid by the broadband affiliate to the electric cooperative equal to pole attachment fees charged by the electric cooperative to like unaffiliated, private entities.

(b) An electric cooperative shall not:

(i) Charge an affiliate under this chapter an amount less than the electric cooperative charges an unaffiliated entity for the same item or class of items; or

(ii) Pay an affiliate under this chapter an amount more than the affiliate charges an unaffiliated entity for the same item or class of items.

(6) An electric cooperative shall not use its electric energy sales revenues to subsidize the provision by an affiliate or unaffiliated broadband operator of broadband services to the public. An electric cooperative may, however, make capital investments in an affiliate, make loans to an affiliate at fair market rate, and enter loan guarantees for the benefit of an affiliate, all of which may be in such amounts and on such terms as the electric cooperative's board of directors determines to be prudent and authorizes.

(7) Electric cooperatives exercising their authority granted by this chapter shall comply with all financial performance and loan covenant obligations required by the United States Department of Agriculture/Rural Utilities Service and/or National Rural Utility Cooperative Finance Corporation or other like entities.

(8) Before broadband services may be offered under this chapter, an electric cooperative must, by resolution of the board of directors and spread upon its minutes, have an economic feasibility study conducted and adopt a plan that will provide service to its entire certificated area. Such feasibility study shall be made available to electric cooperative members upon request.

HISTORY: Laws, 2019, ch. 301, § 3, eff from and after passage (approved January 30, 2019).

Cross References — Electric cooperatives prohibited from: allowing use of electric delivery system by affiliate to diminish reliability of the system, requiring purchase of broadband services from affiliate as condition of receiving electric energy from the cooperative, or disconnecting electric service to customer for nonpayment of broadband services provided by affiliate, see § 77-17-9.

§ 77-17-7. No expansion of regulatory authority of state agencies, instrumentalities or political subdivisions beyond state or federal laws and regulations in place on January 30, 2019.

The passage of Chapter 301, Laws of 2019, does not expand the regulatory authority of any state agency, instrumentality or political subdivision of the State of Mississippi beyond the existing state or federal law and regulations in place on January 30, 2019.

HISTORY: Laws, 2019, ch. 301, § 4, eff from and after passage (approved January 30, 2019).

§ 77-17-9. Electric cooperatives prohibited from: allowing use of electric delivery system by affiliate to diminish reliability of the system, requiring purchase of broadband services from affiliate as condition of receiving electric energy from the cooperative, and disconnecting electric service for nonpayment of broadband services provided by affiliate.

(1) An electric cooperative shall not allow the installation or operation of a broadband system on its electric delivery system by an affiliate or other broadband operator to diminish the reliability of the electric delivery system.

(2) An electric cooperative shall not require any person to purchase broadband services from an affiliate or other broadband operator as a condition of receiving or continuing to receive electric energy from the electric cooperative.

(3) An electric cooperative shall not disconnect, nor threaten to disconnect, its electric service to any customer due to the customer's failure to pay for broadband services provided to the customer by an affiliate or other broadband operator.

HISTORY: Laws, 2019, ch. 301, § 5, eff from and after passage (approved January 30, 2019).

§ 77-17-11. Use of cooperative's electric delivery system for provision of broadband services by affiliate not considered burden on real property on which electric delivery system is located; landowner's remedies for damages caused by use of electric delivery system by affiliate.

(1) An electric cooperative may grant permission to an affiliate or other broadband operator to use the electric delivery system of the electric cooperative to provide broadband services. The use of the electric cooperative's electric delivery system for the provision of broadband services by the affiliate or other broadband operator shall not be considered an additional burden on the real property upon which the electric cooperative's electric delivery system is located and shall not require the affiliate or other broadband operator to obtain the consent of anyone having an interest in the real property upon which the electric cooperative's electric delivery system is located.

(2) If a portion of an electric cooperative's electric delivery system is used by an affiliate or other broadband operator for the provision of broadband services and the landowner of the real property on which such portion is located believes his property has been damaged by such use, the landowner may petition the circuit court of the county in which the property is situated for any damages to which the landowner may be entitled under this subsection.

(a) The petition allowed and damages recoverable under this subsection (2) shall be the landowner's exclusive remedy, and the landowner shall not be entitled to assert any other theory, claims or causes of action nor recover any other damages, punitive damages, costs, attorneys' fees, or other relief.

(b) The recoverable damages, if any, shall be recoverable only from the affiliate or other broadband operator and not from the electric cooperative.

(c) The damages recoverable shall be an amount equal to the difference between (i) the fair market value of the landowner's interest in the real property immediately before the electric cooperative's electric delivery system on the owner's property was first used by an affiliate or other broadband operator for the provision of broadband services, and (ii) the fair market value of the landowner's interest in the real property immediately after the electric cooperative's electric delivery system on the landowner's property was first used by an affiliate or other broadband operator for the provision of broadband services. The before and after values must be established by the testimony of a qualified real estate appraiser. The damages, if any, shall be fixed and shall not be deemed to continue, accumulate, or accrue. The court shall as part of its judgment vest a permanent easement in favor of the affiliate or other broadband operator and their respective successors and assigns for the placement or use of a broadband system on or as part of the electric delivery system. The judgment

will have the same effect of a conveyance executed in due form of law and shall run with the land; and a certified copy of said judgment may be filed by the affiliate or other broadband operator in the land records of the county in which the subject property is located.

(d) Evidence of past, current or future revenues or profits derived or to be derived by an affiliate or other broadband operator from providing broadband services is not admissible for any purpose in any such proceeding.

(e) The landowner shall not be entitled to any damages or other relief relating to any broadband system or portion thereof that is located on the landowner's property and is used or could be used by the electric cooperative for its own operations.

(f) The landowner shall not be entitled to any relief or damages if an easement has been granted to the affiliate or other broadband operator or if the landowner has, either directly or through his membership in the electric cooperative, authorized the electric cooperative to use or allow others to use its electric delivery system for the provision of broadband services.

HISTORY: Laws, 2019, ch. 301, § 6, eff from and after passage (approved January 30, 2019).

§ 77-17-13. Liberal construction of chapter.

This chapter is to be liberally construed, and the enumeration of any object, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things. Nothing in this chapter shall be interpreted or construed to infringe upon nor otherwise encumber the property or property interests used by any investor-owned electric public utility to provide electric service to its customers.

HISTORY: Laws, 2019, ch. 301, § 7, eff from and after passage (approved January 30, 2019).

§ 77-17-15. Annual audit of compliance with chapter; notice to members of election of board of directors, meetings, and election results.

Every electric cooperative shall conduct an annual audit of compliance with this chapter, which shall be made publicly available. Any electric cooperative electing to operate under the provisions of this chapter must send notice by mail to its members of its elections for board of directors separately from any bill, and must send notice by mail to its members of (i) application for candidacy to the board of directors, and (ii) annual meetings at least ninety (90) days before an election or annual meeting. Any electric cooperative electing to operate under the provisions of this chapter must publish, by paid

advertisement in a newspaper or newspapers of general circulation in the electric cooperative's certificated area, results of its elections to each member.

HISTORY: Laws, 2019, ch. 301, § 8, eff from and after passage (approved January 30, 2019).